RNI No. MAHBIL /2009/31744
Reg. No. MH/MR/South-318/2013-15

महाराष्ट्र शासन राजपत्र

भाग एक–ल

वर्ष ५, अंक ४९] गुरुवार ते बुधवार, फेब्रुवारी ६-१२, २०१४/माघ १७-२३, शके १९३५ [पृष्ठे ४०, किंमत : रुपये २३.००

प्राधिकृत प्रकाशन

(केंद्रीय) औद्योगिक विवाद अधिनियम व मुंबई औद्योगिक संबंध अधिनियम यांखालील (भाग एक, चार-अ, चार-ब आणि चार-क यांमध्ये प्रसिद्ध केलेल्या अधिसूचना, आदेश व निवाडे यांव्यतिरिक्त) अधिसूचना, आदेश व निवाडे.

IN THE INDUSTRIAL COURT MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

COMPLAINT (ULP) No. 793 of 1993.—Association of Engineering Workers, Bombay—*Complainant.—Versus*—M/s. Mazgaon Dock Limited, Bombay and 4 others.—*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri V. T. Mirajkar, Advocate for Complainant.
Shri R. S. Pai and Shri Suresh Babu, Advocates for the Respondents.

Order Below Exhibit C-6

(Dictated in open Court)

1. This is an application filed by the Respondent M/s. Mazgaon Dock Limited preying therein that the complaint filed by the union be disposed of being not maintainable. The brief facts which gave rise to the present litigation can be stated in nutshell as below.

2. The Respondent points out that the union is fighting the cause of the employees who are the employees of the contractor and their services in the establishment of the Respondents are through the Respondent Nos. 3 to 5 who are the contractors within the meaning of Contract Labour (Regulation and Abolition) Act, 1970. Therefore, the contract labours engaged by the Respondent Nos. 3 to 5 have no cause of action against the Respondent company. In view of this situation, it is pointed out that in view of the recent rule laid down by the Hon'ble Supreme Court in a case of *CIPLA Limited* V/s. *Maharashtra General Kamgar Union, 2001-I-CLR-754,* the present complaint is not maintainable as these employees are required to approach to an appropriate forum for deciding their relations with the Respondent No. 1 Mazgaon Dock Ltd.

3. The application has been strongly opposed by the Complainant union by filing its say. It is the contention of the union that the complaint as filed before this Court is having different facts than the facts which are averred and reflected in the case referred by the Respondent in the application. In short, it is the contention of the Complainant that the facts of each case when are different then, merely because the rule laid down in a case of CIPLA Limited, the entire complaint cannot be disposed of.

4. On these averments, following points arises for my determination :—

ISSUES	*FINDINGS*
(1) Whether the complaint is maintainable in its present form ?	Negative.
(2) What order ?	As per final order.

Reasons

5. The gist of the submission advanced by and on behalf of the Complainant union is that of the relations. It is a vehement submission of the learned Advocate Shri Mirajkar for the Complainant that the employees though working with Respondent No. 1, their relations with the Respondent Nos. 3 to 5 subsist. The wages of these employees are still outstanding. The Respondents have diagonocally opposite way, has expressed his disconcern on the very ground carrying on any liability so far as the payment of wages of the employees concerned. The Respondent seem to be on a specific defence that the services of these concerned employees stand automatically terminated immediately the contract work with the Respondent No. 1 came to an end.

6. These aforesaid propositions are being reiterated by learned Advocate Shri Mirajkar for the Complainant. He has pointed out my attention towards affidavit Exh. U-3 and emphasised that the termination of service is with retrospective effect and, therefore, it is not legal. He has also pointed out my attention to Exh. 'B', wherein it has been specifically pointed out that the services of these employees have been terminated by the Respondents. Shri Mirajkar has relied on the observations in a case of *National General Kamgar Union* V/s. *Nitin Castings Ltd. and Others 1990-II-CLR-641 Bombay High Court* and emphasis that when the relation of the employees still subsists, the right of the employees to claim the wages is still required to be adjudicated. Such non-payment of wages will be in the nature of following of the unfair labour practices and, therefore, Shri V. T. Mirajkar, Advocate has emphasised that the right to suie still survives atleast against the Respondents and, therefore, the complaint has to be proceeded without getting it dismissed. In view of this contention, the adjudication of the present complaint in the present circumstances has to be seen in view of the observations of our High Court and Hon'ble Apex Court in various landmark judgments. The Hon'ble Supreme Court in a case of *Cipla Limited* V/s. *Maharashtra General Kamgar Union, 2001-I-CLR-754* has considered the question of these contract workmen working for the contractor. The adjudication was such the Respondent No. 1 Cipla Ltd. was the real employer and the Respondent No. 2 is only the name lender being a contractor and, therefore, these workmen have claimed that they are the workmen working under the direct supervision, and directions of the officers of the Cipla Limited. Having regard to the issue raised was of the relations as an employer and employee between these workmen and the Respondent No. 1 Cipla Limited and the contractor. The rule laid down by Hon'ble Their Lordships is that.—

> "The object of enactment is amongst other aspects enforcing the provisions relating to unfair labour practices, if that is so, unless it is undisputed or undisputable that there is employer-employee relationship between the parties, the question of unfair labour practice cannot be enquired into at all."

Having regard to these observations, if at all the present facts are decided on the above said principles, it will be clear that the Respondent No. 1 is registered under the Contract Labour Act and it had entered into a labour contract with the Respondents and the Respondents in furtherance to comply with the contract work, sent these workmen to the Respondent No. 1. Subsequent to that and after completion of the said contract work, the Respondents have declined to accept its relation with the employees as employer, obviously also the Respondent No. 1. In this situation, the question shall definitely be raised as to who is the employer of these employees and what is relation between the employees and the Respondent Nos. 1 and 3 to 5. Therefore, in view of the rule laid down in a case of Cipla Limited (*Supra*), the question of relation interse cannot be adjudicated under the forum of the M.R.T.U. and P.U.L.P. Act. In a case of *Indian Seamless Metal Tubes Ltd.,* the Hon'ble parent High Court has ruled in Writ Petition No. 1433 of 2000 reported in *2001-III-CLR-728* has held that in view of the decision of the Hon'ble Apex Court in Cipla Limited and Kalyani Steel Limited is only precondition to seek remedy under the Act is necessitated of existence of the employer-employee relationship between the parties and when its existence is not already established or is disputable, the party has to first seek relief under the Central Act or the BIR Act and if successful therein, to seek remedy under the Act thereafter. Having regard to this factum, the Hon'ble Lordships of the Hon'ble Supreme Court in a case of *Steel Authority of India Ltd. and Others* V/s. *National Union Water Workers, reported in 2001-III-CLR-349* have considered all the relevant observations of our Parent High Court as well as Cipla Limited and Kalyani Steel Ltd. cases and has upheld the contention that under the forum of M.R.T.U. and P.U.L.P. Act, the Court has no power to enquire into relation when the Contract Labour (Regulation and Abolition) Act, 1970 is invoked. The authority prescribe under the Act therefore, has to be resorted to.

7. So far as provisions under Sec. 10 of the Contract Labour Act, 1970 is concerned, it prohibits employment of contract labour. Sub-clause (2) provides that the appropriate Government has power to prohibit employment of contract labour in any process. Before issuing a prohibition, the appropriate Government has to consult the Central Government or the State Board and have regard for condition of work and benefits provided for contract labour in any establishment. Under the explanation, the decision of the appropriate Government on the question whether any process operation or other work is of perennial nature shall be final. Since under the purview of section 10, the decision given by the appropriate Government has a finality to the disputed point raised, then it is evidently clear that the parties holding the litigation has to approach to the said authority.

8. Learned Advocate Shri Mirajkar for the Complainant has pointed out my attention to section 21 under the Contract Labour Act which formed a responsibility of the contractor for payment of wages to the workmen employed by him and Sub-section (*3*) points out the duty of the contractor to ensure disbursement of wages in the presence of the authorised representative of the principal employer. Shri Mirajkar has also pointed out to me towards Rule 25. The proposition as advanced by Shri Mirajkar is pertaining to the rate of wages payable to the workmen by contractor, which shall not be less than the minimum rates of wages fixed under the Minimum Wages Act. This Sub-clause (IV-a) of Rule 25 under the Maharashtra Contract Labour Regulations and Abolition Rules, 1971 are framed under the said enactment. The proposition there under shall be applicable to those who are the registered contractors. Simultaneously, the proper forum has been given under the same enactment for redressal of the wrong cause to the aggrieved employee. Therefore, in view of Rule (1) by the Hon'ble Apex Court in a case of *Steel Authority of India (supra)* the employees are required to approach the said authority.

9. Hon'ble Division Bench of our High Court in a case of *Hindustan Coca Cola Bottling s/w Ltd.* V/s. *Bhartiya Kamgar Sena and Others 2001-III-CLR-1025* have also considered the observation of Apex Court in Cipla Ltd. and also ruled by verifying the facts as being narrated before the Court that in a case where the employer had never recognised the workmen as his employees and throughout treated these persons as employees of the contractors, this Court constituted under Sec. 28 of the M.R.T.U. and P.U.L.P. Act will have no jurisdiction to entertain

the complaint unless the status of relationship of employer-employee is first determined in a proceeding under the Industrial Disputes Act. Hon'ble Division Bench has referred to the observation in a case of *Indian Seamless Metal Tubes (supra)* that only precondition to seek remedy under the Act is necessity of existence of employer-employee relationship. It is, therefore, ultimately ruled that the Court cannot assumed jurisdiction to entertain the complaint when the relation itself is in dispute and, therefore, such complaint, will have to be dismissed as not maintainable.

10. In view of the above contention, this Court has no jurisdiction to deal with this complaint. Even if the present complaint against the Respondent Nos. 3 to 5 continued, the prayers in that very complaint is from the Respondent No. 1. The relations of these employees with these Respondents as well as the nature of the contract between these Respondents will be required to be decided by the appropriate authority and such authority will have to come to proper conclusion. After such conclusion only, this Court will be having a jurisdiction. The specific word used by our Parent High Court in the various cases as well as by the Apex Court that the complaint in such form is not maintainable. When the complaint itself is not maintainable, there shall be no question of relieving the principal employer and continuing a complaint against the contractor etc., is also not permissible. Therefore, in my considered opinion formed on the basis of the observations of the Hon'ble Apex Court that the complaint cannot continue.

11. So far as application Exh. C-6 is concerned, in view of the above discussion, this application has to be allowed and in consequence of these conclusions, the resultant outcome of these observations is that of the disposal of the present complaint with a direction to the Complainant to approach the appropriate authority and the authority before whom the matter will be taken, shall hear the matter as early as possible. In the result, I have given my findings to the above points accordingly and pass the following order :—

Order

(*i*) The application Exh. C-6 is hereby allowed.

(*ii*) The complaint is hereby dismissed for want of jurisdiction.

No order as costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Dated the 22nd March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 17th April 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI V. P. ROTHE, MEMBER

REVISION APPLICATION (ULP) No. 14 of 2000—Shri Rajendra Prasad Bhawani Singh, C/o. The BEST Workers Union, 42, Kennedy Bridge, Mumbai—*Applicant—Versus*—The General Manager, The BEST Undertaking, BEST House, Mumbai-400 001—*Opponent.*

CORAM.— V. P. Rothe, Member.

Appearances.— Shri. S. A. Khanolkar, Advocate for the Applicant;
Shri P. M. Palshikar, Advocate for Opponent.

Judgment

1. Being aggrieved by the order dated 26th February 1999 passed by the Third Labour Court, Mumbai in complaint (ULP) No. 434 of 1996, this Revision is filed by the BEST Workers Union on behalf of the Applicant Shri Rajendraprasad Bhawani Singh.

2. A few facts may be useful to know the background of this application. The Applicant was the Bus Driver No. 87240 attached to Kurla Depot. The Applicant Driver came to be dismissed in the departmental enquiry proceeding of the Respondent *i. e.* BEST Undertaking. The dismissal order is challenged before the 3rd Labour Court, Mumbai in its order dated 26th February 1999, learned Labour Court dismissed the complaint filed by the Applicant. Hence, this Revision is filed on the following amongst other grounds. The accident had occured on 28th June 1995 when the Bus driven by the Applicant was going from Ghatkopar Station (West) to Milind Nagar. When this bus reached near chiragngar, Ghatkopar (West) along with L. B. S. Marg, the pedestrian tried to cross the road from North to South. The distance between the bus and the pedestrian was only one metre. Thus, the Applicant could not avoid the accident because of the short distance and despite of the slow speed of the bus. The Applicant has tried his level best to turn the bus towards right side and also applied the breaks. Despite of mentioning of the above facts in the preliminary report given by the Bus Inspector No. 106 on 3rd July 1995. That the accident was on account of the negligence of the pedestrian that was not taken into consideration by the learned Labour Court. There was no eye witness who had seen the accident. The deceased was fallen at the distance of 5ft. from the bus. The Applicant had joined the service of the BEST Undertaking on 14th July 1987 and dismissed on 29th December 1995. He has to his credit 8 years and 5 months of service and overall service record of the Applicant was not bad. The Applicant is having the wife and school going children. All of them are facing economic debts. Thus, the Labour Court has not given any cogent reason to show how the alleged misconduct is a gross negligence. Hence, it is prayed that it be declared that the order of the Labour Court is illegal and allow this Revision Application.

3. I have heard learned Counsels of both the parties at length. I have perused the records placed before me. Following is the only point arises for my consideration :

Points	*Findings*
(1) Whether the impugned order dated 26th February 1999 passed by the Third Labour Court, Mumbai is illegal, perverse and contrary to the law?	No.
(2) What order ?	As per order below.

Reasons

4. The learned Counsel of the Revision Applicant has addressed the argument that the Applicant had put considerable service and while passing the impugned order, the learned Labour Court was very much influenced by the past service record of the Applicant and that aspect was only considered by the learned Labour Court. Thus, without considering the merits of the matter of the present case, the learned Labour Court has considered the past service record and came to wrong conclusion in this case. I have gone through the impugned order and finding that on page Nos. 4 and 5 of the said order, it is observed by the Labour Court that fair opportunity was given to the Applicant and the principles of natural justice have been followed in the enquiry proceedings and, therefore, the Labour Court has observed that no unfair labour practice was committed by the Opponent *i. e.* BEST Undertaking. In the accident, one of the pedestrians was succumbed to the death while crossing over the road. That accident could have been avoided, had there been little caution exercised by the Applicant. The learned Labour Court has considered the observations made by the Trying Officer and pointed out that the Accident Inspector in his report has mentioned that the speed of the bus in question at the material time was 25 killo meter per hour and the accident was on account of the negligence of the pedestrian. It is further mentioned in the Original proceedings of the enquiry that at the place of the accident, there was no zebra crossing *i. e.* white stripped portion for crossing over the road by the pedestrian. The wife of the deceased pedestrian is the only eye witness, who has stated in the statement before the enquiry officer that the deceased was not under the influence of liquor or drug. There is no dispute about the fact that the similar type of misconduct was committed by the Applicant in the past. Now, the question is that whether the present misconduct is prove against the Applicant. As pointed out earlier, the learned Labour Court had offered an opportunity to the Applicant and specifically observed that the opportunity was given to him to lead evidence and the learned Labour Court came to the conclusion that the enquiry was fairly conducted against the Applicant. The Trying Officer in his report at page No. 14 has observed that there was no mechanical defect in the bus and the driver of the bus had noticed that the pedestrian while crossing over the road, but as the distance between the pedestrian and the bus was very short, it could not be stopped. After occurrence of the accident, the dead body of the pedestrian was found at a distance of 14 feet from the footpath and there was a bus stop a head of the spot of the accident at a distance of 10 to 15 feet. Thus, when the bus stop was at such a short distance, the bus could not have been driven by the Applicant in such a speed, that he could not control it. Even after noticing the pedestrian while crossing over the road, it could not be stopped. It is further mentioned by the wife of the deceased pedestrian before the trying officer that she did not feel that the horn was blown at the time of the accident. Before the trying officer, the effort was not made by the Applicant to show that the effects have been made by him for stopping the bus. The statement that was made by the Applicant before the trying officer was that he swerved the bus towards the right side for avoiding the accident. It has come in the evidence before the trying officer that the driver had applied the brakes after giving dash to the pedestrian. It clearly shows that there was no effort made for avoiding the accident. On account of this lack of exercising the proper precaution, on the part of the driver of the bus, the trying officer came to the conclusion that the driver of the bus was negligent in driving the bus and therefore he committed breach of rule 20 (j). Thus, the negligence in duty and the misconduct of the Applicant was proved before the trying officer. The learned Labour Court has proved it, and while doing so, it is endorsed by the Labour Court for considering the antecedents and past service record of the Applicant, he was tried for the same type of conduct and dismissed from services of the Opponent Undertaking on 6th September, 1990. However, he was taken back in service on 22nd October, 1991, and no improvement was found in his work. For other types of fault, the Applicant was repremanded and suspended for 15 days, one day, on the verious occassion and no improvement was found in his work, and therefore, the learned Labour Court came to the conclusion that as there is no improvement in the service & working of the Applicant, the punishment of his dismissal is not disproportionate. Considering the reasoning given by the learned Labour Court, I find that even if re-appreciation of the evidence is done and the entire enquiry proceedings, scanned no illegality is found committed by the learned Labour Court while passing the impugned order.

5. The learned Counsel of the Applicant Shri Khanolkar, Advocate is relying upon the judgment reported in 2000 III CLR 320 Maharashtra State Road Transport Corporation *Versus* ABM Shaikh & others, and submitted that the Industrial Court in revision application should independently assess each issue under challenge and should not mechanically decide the revision application. This principle is laid down in the above said authority. With utmost respect to the enunciation of the abovesaid ruling, I tried to appreciate and assess the issue under challenge, as discussed above. It is further submitted by the learned Counsel of the Applicant that the justice must be tempered with mercy and the erring workman should be given an opportunity to reform himself to be a loyal and disciplined employee of the company. In support of his say, he has relied upon the case reported in 1989 SC (L & J) 180 in Sector India Limited *V/s.* Labour Court, Lucknow. As per the observations made by the Hon'ble Supreme Court in the abovesaid case, and as per the facts of the above case, the reinstatement with back wages was made by the Labour Court and it was held that the said power has not been exercised by the learned Labour Court arbitrarily. The facts of the reported case can be distinguished from the facts of our case.

6. The Learned Counsel also relied upon the rulings reported in :-

(1) 1991 I CLR 362 (BC) H. C. Puttaswamy *V/s.* C. J. Karnatake High Court.

(2) 1991 I CLR 351 (M. P.) Naxirkhan *V/s.* M. P. Rajya Bhandar Griha Nigam.

(3) 1991 I CLR 474 (Allahabad) S. S. Ahluwalia *Versus* G. B. Pant University.

and submitted that the case of the Applicant be considered on humanitarian approach. There is no dispute about the fact that in the disciplinary proceedings of the past, the Applicant had committed misconduct and no improvement of work was found in him. If the Applicant had abused the repeated opportunity given to him, what is the point in offering him opportunity after the opportunity.

7. The learned Counsel of the Opponent is relying upon the ruling reported in 2000 (4) LLN 1052 MSRT Corporation *V/s.* Mustaq Ali Amjad Ali Shaikh and submitted that the departmental proceedings cannot be equated with the criminal prosecution. The charges are already proved against the Applicant in the departmental proceedings and the dismissal of the Applicant was already proposed and the Labour Court came to conclusion that holding of such departmental proceedings is not amounting to unfair labour practice. This decision of the Labour Court is not illegal, and therefore, no interference at the hands of this Court is required in the matter. The learned Counsel relies upon the ruling reported in 2000 (4) LLN 1052 M. S. R. T. Corporation *V/s.* Mustaq Ali Amjad Ali Shaikh. After going through the facts and circumstances on record, and the probabilities of the case, I find that the impugned order passed by the learned Labour Court is not illegal or perverse and no interference is required in it. In view of this, this revision application is required to be dismissed. Accordingly. I answer the Point No. (1) in the negative and pass the following order :-

Order

(1) Revision Application (ULP) No. 14 of 2000 stands dismissed.

(2) No order as to costs.

(3) Records and Proceedings be sent to the Labour Court, Mumbai.

V. P. ROTHE,
Member
Industrial Court, Mumbai.

Mumbai,
Dated the 10th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th April 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI P. B. SAWANT, MEMBER

APPLICATION (ULP) No. 558 OF 2001.—Janata Kamgar Union, Bldg. No. 8, Unnat Nagar-4, M. G. Road, Goregaon (W), Mumbai 400 062.—*Complainant—Versus*—(1) Mr. Chimanbhai Patel, 9, 10 & 207, Agarwal Co-op. Ind. Estate Ltd., S. P. Road, Dahisar (E), Mumbai 400 068, (2) Mr. Maganbhai Patel, 9, 10 & 207, Agarwal Co-op. Ind. Estate Ltd., S. P. Road, Dahisar (E), Mumbai 400 068, (3) Mr. Bhagubhai Patel, 9, 10 & 207, Agarwal Co-op. Ind. Estate Ltd., S. P. Road, Dahisar (E), Mumbai 400 068, —*Respondents.*

CORAM.— Shri P. B. Sawant, Member.

Appearances.— Shri. P. R. Singh, Advocate for Complainant;

No appearance on behalf of the Respondents.

Order

1. Janata Kamgar Union (hereinafter referred to as the "Complainant Union") has filed the complaint alleging against the Respondent that they have followed unfair labour practice within the meaning of items 1 (*a*), (*b*), 2 and 6 of Schedule II and item 9 of Schedule of the M.R.T.U. & P.U.L.P. Act. The facts which gave rise to the present litigation can be stated in nutshell as below.

2. The Complainant is a registered union. The employees in Annexure 'A' are in the employment of the Respondent. The Respondent Nos. 1, 2, and 3 are group of persons doing diamond business jointly without having their name of business, in Gala Nos. 9, 10 and 207, Agarwal Co-op. Industrial Estate, Mumbai. The employees have joined the union for getting theirs legal rights guaranteed under the provisions of various labour legislation. It is alleged that the Respondents never have issued appointment letters to the workmen nor maintaining any attendance register, salary register. They were taking 4 hours overtime work from each and every workman without paying them overtime wages at the double rate. Nor they have implemented the provisions of Provident Fund and E. S. I. Act. The Complainant informed the Respondent about their joining the union. After receiving the intimation letter, the Respondent started all sorts of vindictive activities by harassing these workman and threatening them to discharge or dismiss from service if they do not disassociate themselves from the Complainant union. The Respondents have also threatened to resort lockout or close down the establishment if the workmen do not disassociate themselves from the union. Therefore, these employees are under the strong apprehension that the Respondent will arbitrarily dismiss the service of the concerned workmen if they know about filing of the complaint. Therefore, it is prayed that a declaration be awarded and consequently, the Respondents be restrained from terminating the services of the employees without following due process of law or closing the establishment without following due process of law. It is also prayed that the Respondents be restrained from selling the machinery, tools, premises without clearing the legal dues of the workmen mentioned in Annexure to the complaint. With all and other prayers, the present complaint has been filed.

3. On perusal of the complaint, affidavit and documents on record, this Court was pleased to issue notice to the Respondents. The Bailiff has made a report *vide* Exh. O-2 that the Respondent Shri Chimanbhai Patel has refused to accept the notice for himself and for the other Respondent Nos. 2 and 3. Treating the said refusal as a service of notice, this Court has proceeded *ex-parte* against the Respondents.

4. The concerned employees have filed their respective affidavit *vide* Exh. U-7, Exh U-8, Exh. U-9, and Exh. U-10. While the Secretary of the union has filed his affidavit *vide* Exh. U-6. Having gone through the contents in the complaint and the affidavits, following points arise for my determination.

Points	*Findings*
(1) Does the Complainant prove that the Respondents have engaged themselves into following of unfair labour practices as alleged ?	Partly yes.
(2) What order ?	As per final order.

5. On bare look to the contents in the complaint, the concerned employees seem to have been engaged themselves in dealing with the business of Diamond cutting. The affidavits filed by the concerned employees relate to the employment and the working hours. Their contentions that they have been working 4 hours more everyday without getting any overtime has been no retaliated. The contention that the facilities of provident fund and E. S. I. have not been extended to those workers. The other aspects regarding leave wages, yearly bonus, that have also not been paid to them. On these assertions, the concerned workmen point out that they have joined the union in these circumstances to get a redressal. Thereafter, the union seems to have informed the Respondent by letter dated 6th July 2001 Exh. 'A' by which intimation has been given to the employer of these concerned workmen becoming the members of their union. The grievances in respect of those employees have been intimated *vide* Exh. 'C' dated 6th July 2001 to the employer. Simultaneously, the alleged threats to the workmen have also been intimated to the Respondent by letter dated 16th July 2001 Exh. 'D'.

6. It appears from the record that there is no response from the employer so far as said letter correspondence is concerned. If at all the contents in the affidavits are taken into consideration, then the averments in the Complainant have to be held as established because there is no retaliation. However, the sense of unfair labour practice should necessarily be smelt for the purpose of granting a declaration to that effect. Merely the employer has not Responded to the correspondence of the employee will not itself bind the employer by the order of the Court.

7. In pursuance of these remarks, I have referred to items, 1(*a*) and 1 (*b*) of Schedule II which relates to the unfair labour practices followed by the employer by threatening the employees with discharge or dismissal if they join a union as well as threatening a lookout or closure if a union would be organised.

8. Having regard to the text used while drafting this item, the notice of documents on record indicates that by letter of the union regarding its formation in the establishment of the Respondent has given a rise of discord in between the employer and employee. The employees approaching the union and their filing affidavit before the Court itself is sufficient to note what must have happened to them when for the first time, they have formed the union to ventilate their grievances. The allegations of the concerned workmen regarding giving threats of discharge and dismissal is a resultant outcome of formation of the union and, therefore, I have found that there is substance in their contention that the employer has threatened to lockout the premises or dismiss the employees, if they form a union or resort to formation of the union. The facts on record supports the conclusion because there is no appointment letter or E. S. I. card or salary-slips to postulate that the normal performance of duty as an ideal employer has been followed by the Respondent. Therefore, I have found that there is a sense of following of unfair labour practice in the behavior of the Respondent that too after employees forming a union.

9. So far as items 2 and 6 are concerned, there is no whisper on record to show that the employer has taken an active interest in organising his own union or showing any partiality in favour of one of the several unions attempting to organise his employees a union which is not recognized. There is no evidence even on the *prima facie* basis that a lockout is being proposed and which can be deemed to be illegal under the Act. Deeming fiction so far as alleged cannot be attributable to the facts as seem from the pleadings as well as from the affidavit filed by the Secretary of the union or by the concerned employees.

10. Item 9 of Schedule IV relates to failure to implement award, settlement or agreement. The contract of employment is always self-explanatory as it presupposes that the employer will follow all the responsibility and libilities fixed on him. By the statute. When the workers are alleging that they are not being served with the appointment letters nor they are getting the benefits of E. S. I. or their contributions are being made towards provident fund itself is sufficient to come to a *prima facie* conclusion that the service conditions are not being properly followed by the employer. So far as overtime wages and other benefits assured under the labour legislation when alleged to have been not given to the concerned employees, the said positive assertion has no where been denied by the Respondent and, therefore, on the basis of the affidavits filed by the concerned employees and relying on the averments in the complaint itself, I have found that there are reasons to believe that the Respondent has followed unfair labour practice under item 9 Schedule IV of the M.R.T.U. & P.U.L.P. Act. Therefore, I have given my findings to the points accordingly and pass the following order.

Order

(*i*) The complaint is hereby partly allowed.

(*ii*) It is hereby declared that the Respondents have committed unfair labour practices within the meaning of items 1 (*a*) and 1 (*b*) of Schedule II and item 9 of Schedule IV of the M. R. T. U. & P. U. L. P. Act, 1971.

(*iii*) The Respondents are directed to desist from continuing to follow such unfair labour practice and directed that they shall not terminate the services of the employees named in Annexure 'A', without following due process of law and they shall not effect the lockout on account of employees' forming a union or discharge any of the employees named in Annexure 'A' on account of joining a union.

(*iv*) The Respondents are restrained from creating any third party interest in their property situated at Gala Nos. 9, 10 and 207, Agarwal Co-op. Industrial Estate Ltd., S. P. Road, Dahisar (E.), Mumbai 400 068 till all the legal dues and arrears thereof are being paid to the workers.

No order as to costs.

P. B. SAWANT,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 6th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 23rd April 2002.

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IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI U. R. PATIL, PRESIDENT,

REVISION APPLICATION (ULP) No. 37 OF 2002 IN COMPLAINANT (ULP) No. 40 of 2001— M/s. Satish Couriers, A/6, Dhanashree, 19 Old Nagardas Road, Andheri (E.), Mumbai 400 069.— *Applicant Versus*—(1) Shri Mahesh D. Mohite, Bhartiya State Bank Chaturshreni Karmachari Union, Mahiswala Chawl, Gandhi Nagar, Jogeshwari (E.), Mumbai 400 060, (2) Shri Ganesh R. Pugaonkar, Bhartiya State Bank Chaturshreni Kamgar Union, Mumbai 400 060, (3) The Presiding Officer, 4th Labour Court, Mumbai.—*Opponents.*

In the matter of Revision u/s. 44 of the M. R. T. U. & P. U. L. P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri R. V. Sankpal, Ld. Advocate for the Applicant.
Shri S. S. Chaubal, Ld. Advocate for the Opponents.

Oral Judgement

(20th April 2002)

The present Revision Application is preferred by the Applicant feeling aggrieved of the order below Exh. U-2 dated the 15th March 2001 whereby the 4th Labour Court, Mumbai allowed the Application directing the Original Respondents *i. e.* Applicant herein to allow the Complainants to resume their duties within one month from the date of the order on previous service conditions. The Applicant has also challenged the order below Exh. C-5 dated the 5th February 2002 *i. e.* for review of the earlier order dated the 15th March 2001 and the Labour Court rejected the said Application by its order dated the 5th February 2002.

2. Brief facts giving rise to the case may be stated as follows :—

It is seen that the Original Complainants Mr. Mohite and Mr. Pugaonkar have filed complaint under items 1 (*a*), (*b*), (*d*), (*f*) of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971 and requested for the reliefs, as mentioned in the main complaint and particularly to reinstate them with full backwages and continuity of service w. e. f. 2nd December 2000 and direct Respondent to with draw their letter dated the 2nd December 2000 and allow them to resume the duties and pay them the monthly salary every month.

3. During the pendency of the said complaint, an Interim Application Exh. U-2 was taken out and in the said Application it is contended that the Respondents have terminated their services without following due process of law, on false allegations of misconduct. The Complainants have stated that the Respondents got annoyed by the efforts of the Complainants in seeking permanency in Bhartiya State Bank, where the Respondent No. 2 is engaged as a Contractor. It is alleged that no fair and proper opportunity was given to the Complainants to defend themselves. It is further contended that their services have been terminated with undue haste and under the colourable exercise of employer's right, without issuing chargesheet and conducting the departmental enquiry and therefore by way of interim relief, they prayed to direct the Respondents to allow them to resume their duties and other reliefs.

4. Record shows that notice was served to the Respondents *i.e.* Applicants herein and they have appeared through an Advocate, but failed to file their reply and therefore the Labour Court decided the Application Exh. U-2 *exparte* by passing the impugned order dated the 15th March 2001, referred to above.

5. Thereafter it is seen that the Respondents preferred Application Exh. C-5 stating therein that they have received the summons and instructed their Advocate to take short adjournment and accordingly the matter was adjourned to 2nd March 2001. Since the Respondent No. 2 is an old person and was suffering from illness, he could not contact his Advocate on 2nd March 2001 and the Advocate was held up in the Hon'ble High Court. It is submitted that after finishing his work when he appeared, he learnt that hearing was over and matter was kept for orders on 15th March 2001. On the said date, Advocate for the Respondents requested for

adjourning the matter for filing his reply, but his Application was rejected and the impugned order was passed below Exh. U-2. The sum and substance of the contentions in the Review Application is that under the aforesaid circumstances, the Original Application and complaint are misconceived and not maintainable and by granting the interim relief, whole complaint was decided, they have good case to succeed. Hence requested for setting aside the *exparte* order passed below Exh.U-2 on 15th March 2001.

6. The Original Complainants resisted that Application by filing Reply at Exh. U-8 and asserted that the Respondents have appeared through their Advocate and sought adjournment for filing reply. Again on next date, the Advocate prayed for adjournment, but did not file Written Statement on the adjourned date. It is contended that as the Respondents have appeared in the matter, the order cannot be treated as *exparte* order and therefore requested to reject the Review Application, referred to above.

7. The Labour Court on hearing the submissions of the Ld. Advocate for the parties and considering the record and proceedings, passed the impugned orders, referred to above and feeling aggrieved of the same, the Original Respondents who are the Applicants herein by filing the Revision Application, requested to set aside the impugned order.

8. I have called for the record and proceedings and gone through the same. Heard Mr. R. V. Sankpal, Ld. Advocate for the Applicant and Mr. S. S. Chaubal, Ld. Advocate for the Respondents. The following points arise for my determination, with my findings thereon, as under :—

Points	*Findings*
(1) Whether Revision Appln. (ULP) No. 37/2002 is to be allowed by setting aside the order below Exh. U-2 dated the 15th March 2002 and order below Exh. C-5 dated the 5th March 2002 ?	No.
(2) What order ?	Please see final order.

Reasons

9. Record and Proceedings reveal that the two Complainants *viz*. Mr. Mohite and Mr. Pugaonkar claimed that they were working with the Original Respondents as Courier Boys and had put in 12 years and 6 years of continuous services. It is their grievance that the Applicants herein by issuing a letter dated the 2nd December 2000 abruptly terminated their services and therefore they have alleged unfair labour practice against the Respondents and prayed for the appropriate reliefs. It is seen that Application Exh. U-2 was taken out by the Original Complainants and on 5th February 2001 Mr. Juvekar, Advocate for the Respondents *i.e.* Applicants herein filed his appearance memo and his application for adjournment Exh. C-2 was granted, and the matter was adjourned to 2nd March 2001. On 2nd March 2001 the Complainants and their Advocate Shri Chaubal was present, but none appeared for the Respondents and also did not file any reply and therefore the Ld. Labour Judge on hearing the Complainants Advocate adjourned the Application Exh. U-2 for orders on 15th March 2001. The Roznama reveals that on 15th March 2001 Respondent's Advocate was present and submitted an application to adjourn the Application Exh. U-2 for passing the orders. The say of the Advocate for the Complainants was obtained and the Ld. Labour Court rejected the said application on 15th March 2001 and the order below Exh. U-2 was passed. The Review Application preferred by the Original Respondents has also been rejected by the Labour Court on 5th February 2002.

10. Now the main contention and grievance of Mr. Sankpal, Ld. Advocate for the Applicant is that the Labour Court ought not to have passed the order below Exh. U-2 on 15th March 2001 when the Advocate had requested by making an application for granting an adjournment. According to Mr. Sankpal, the Labour Court hurriedly passed the order and granted the relief to the Complainant, which has caused prejudice to the Applicants and therefore requested that considering the facts and circumstances, the impugned orders passed by the Labour Court be set aside.

11. On the contrary, Mr. Chaubal, Ld. Advocate for the Opponents herein strongly supported the orders passed by the Ld. Labour Court and submitted that there is no scope for interference by this Court u/s. 44 of the M. R. T. U. & P. U. L. P. Act and therefore prayed that the instant Revision Application be dismissed.

12. It is rather difficult for me to accept the submissions of Mr. Sankpal, Ld. Advocate for the Applicant for the reason that on perusal of the Roznama, referred to above, it clearly shows that even though adjournment was granted by the Labour Court on 5th February 2001 for filing reply, the Respondents and their Advocate remained absent on the adjourned dated *i. e.* 2nd March 2001 and the Labour Court after hearing the Complainants' Advocate posted the matter for order below Exh. U-2 on 15th March 2001. It is significant to note that even on 15th March 2001, the Ld. Advocate for the Respondents preferred application for adjournment, but did not prepare the reply to Application Exh. U-2 even though sufficient time of about more than 3 weeks was granted and again pressed for adjournment and requested the Court not to pass the order below Exh. U-2. From the facts and circumstances on record, it reveals that the Respondents and their Advocate were not deligent and failed to file the reply, though long adjournment was granted. In fact it was for the Respondents either to remain present themselves or had instructed their Advocate to remain present when the matter was fixed on 2nd March 2001, but none appeared before the Labour Court and therefore there was no alternative for the Labour Court, but to pass the order below Exh. U-2. I dont find that any sufficient ground is made out by the Applicants to set aside the impugned order passed by the Labour Court for the reason that the Ld. Labour Court has considered the facts and circumstances on record. It is important to note that when the party and its Advocate are not attending the Court and not filing Reply to the Interim Application, then in that case no blame can be given to the Labour Court who has followed the procedure and passed the impugned order. I have carefully gone through both the orders below Exh. U-2 and Exh. C-5 respectively and I don't find any illegality or irregularity committed by the Labour Court to call for the interference of the Industrial Court to set aside the orders in question.

13. I am aware that much was canvassed by Mr. Sankpal that in fact the Main complaint and Interim Application Exh. U-2 are not maintainable for the reason that M/s. Satish Couriers is governed by the Central Government and the Complainants are not the employees and therefore the Labour Court has no jurisdiction to entertain and try the present complaint. In support of his submission, he invited my attention to *1991 I LLJ p.233* (M/s. J. R. Jugele, Rly. Contractor *V/s.* Smt. Sitabai Atmaram & Ors.). On going through the said case, it appears that there was a problem for consideration under the I. D. Act, 1940-Section 10 (*2*) (*A*). There was a coolie working under Railway Contractor engaged for collecting cinder from ashes Contractor having contract with railways Termination of services of such coolie by Contractor-Appropriate Government is Central Government and not State Government. He also placed a reliance on the case reported in *1992 I LLJ p.242* (General Employees Association *V/s.* Union of India & Ors.). On carefully going through this case, it shows that there was also a point for consideration u/s. 2 (a) of the I. D. Act in respect of Appropriate Government. It has been held that the employees working with the fourth Respondent-contractor are working in the premises of the third Respondent Corporation who maintains the canteen under the provisions of the Factories Act and therefore the appropriate Government will be the Central Government. Thus relying on the aforesaid two cases, Mr. Sankpal led emphasis that the Applicants herein have a good case to agitate the point of maintainability of the complaint and the jurisdiction of the Labour Court. The said submission of Mr. Sankpal at this stage cannot be considered. It is because if any opinion on the said point is expressed particularly when the Main complaint is pending, it will cause prejudice to either side and it will also affect the trial of the complaint before the Ld. Labour Court.

14. On carefully examining the facts and circumstances and viewed from all the angles, I am of the view that the revisional powers in the case in hand u/s. 44 of the M.R.T.U. & P.U.L.P. Act cannot be exercised to set aside the impugned orders passed by the Labour Court. Hence, I answer the Point No. 1 in the *Negative.*

15. Before parting with the judgment and order, Mr. Sankpal, Ld. Advocate for the Applicants requested that the complaint be expedited and made time-bound, to which Mr. S. S. Chaubal has no objection. Thus considering the points involed in this case, the complaint deserves to be expedited.

16. *Point No. 2.*—In view of the foregoing reasons and finding on point No. 1, the Revision seems to be devoid of merit and I pass the following order :—

Order

Revision Application (ULP) No. 37 of 2002 is dismissed.

Complaint (ULP) No. 40 of 2001 is expedited and to be disposed of by the 4th Labour Court, Mumbai by the end of July, 2002.

Parties and Advocates are directed to co-operate the Labour, without taking uncalled adjournments.

No. order as to cost.

U. R. PATIL,
President,
Industrial Court, Maharashtra, Mumbai.

Mumbai,
Dated the 20th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 16th May 2002.

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IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 33/1992 & 34/1992.—IN COMPLAINANT (ULP) Nos. 243/1988 & 242/1988.—Messrs. Laffand (India) Pvt. Limited, 21/23, Veer Nariman Road, Mumbai 400 023.—*Applicant in both the revision application.*—*Versus*—Sudhakar Beniram Wani, C/o. Mumbai Kamgar Sabha, Habib Mansion, Dr. Ambedkar Road, Parel, Mumbai 400 012— *Opponent No. 1 in Revn. Appln. (ULP) No. 33/1992.*— Mr. Umesh Uchil, C/o. Mumbai Kamgar Sabha, Habib Mansion, Dr. Ambedkar Road, Parel, Mumbai 400 012— *Opponent No. 1 in Revn. Appln. (ULP) No. 34/1992*— Shri M. B. H. Shaikh, Presiding Officer, Third Labour Court, Bombay—*Opponent No. 2 in both the Revn. Applications.*

In the matter of Revision Applications under Sec. 44 of the M. R. T. U. & P. U. L. P. Act, 1971.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri B. Menon Advocate for the Applicant Company.

Shri Rajesh Hukeri Advocate for the Opponents.

Judgement and Order

1. The present Applicant company was the Respondent in both the complaints being complaint (ULP) Nos. 243/1988 and 242/1988 filed by the Opponents in both the revision Applications for unfair Labour practices under items 1 (*a*), (*b*), (*d*), (*f*) and (*g*) of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971. (hereinafter the referred the Application Company in both revision Applications is reffered to as the Respondent company and the Opponents in both the revision applications are referred to as the Complainants-employees/Complainant-employee).

2. Both these Complainants-employees were in the employment of the Respondent company and they were chargesheeted and discharged on the same reasons/grounds. Thus, the Complainants involved common facts and issues. The trial Judge also decided both the said complaints on 29th January 1992 by delivering separate judgements on the common evidence recorded in complaint (ULP) No. 242 of 1988.

3. Being aggrieved by the judgement and the final order Dated 29th January 1992 passed in both the complaints, the Respondent company has brought the present revision applications separately on the grounds as set out in its revision applications.

4. Both the Complainants-employees had approached the Labour Court, Mumbai, with the following facts :—

They were in continuous service of the Respondent company for about 6 years. The Respondent company issued the show cause notices to them, on the allegations that they had proceeded on strike on 9th April 1988, they instigated other employees to remain absent from work, and they committed breach of the settlement dated 1st August 1986. On the show cause notices, they raised querry by their letters dated 6th April 1988, but the Respondent company informed them about initiation of the disciplinary action against them under the model standing orders. They have further alleged that they replied the show cause notices by their replies dated 21st April 1988 and thereby denied the allegations made against them and also explained that they did not report on 1st April 1988 being holiday on account of Good Friday declared by the Respondent company and there was no strike, as alleged. Thus, they made clear that the charges were false and they were not guilty for the misconduct. However, the Respondent company did not issue the chargesheets to them and did not initiate any enquiry against them as per the Model Standing Orders. They have further contended that the Respondent company discharged/retrenched them *vide* its letter dated 4th May 1988 by way of punishment. Thus, the said action was in utter disregard of the

principles of natural justice and it was in haste. They have further alleged that the Respondent company has taken the action of discharging them due to their active roll in the activities of the trade union *viz.* Mumbai Kamgar Sabha. The Respondent company *vide* their discharge/ retrenchment letters dated 4th May 1988 asked them to collect their legal dues. But the Respondent company neither paid them their legal dues, nor paid any notice pay or retrenchment compensation. Hence, they brought the said complaints seperately for their reinstatement with full back wages and continuity of service from 7th May 1988 and other reliefs.

5. On appearance, the Respondent company filed their written statements in both the complaints and thereby denied the allegations made against it. According to it, the Complainants took 15 days' time for filing their written explaination. Then, the Complainants were called for in the enquiry and asked them to submit their written explaination, but they did not turn up. Thus, there was no other alternative than to close the enquiry and complete the enquiry proceedings. It is further contended that the Complainants instigated the illegal strike on 1st April 1988 and did act in contravention of the agreement/settlement dated 30th August 1986. The Complainants had also bad past service record. It is further contended that the enquiry against the Complainants was conducted by following the principles of natural justice and on the said enquiry, both the Complainants were found guilty of serious acts of misconduct. Therefore, the punishment of discharge is not disproportionate. It is further contended that it offered compensation, notice pay and all legal dues at the time of termination letters, but both the Complainants refused to accept the same. Thus, they have not committed any unfair labour practices, as alleged.

6. Heard the learned Advocates for both parties. On considering their arguments and the material placed on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the Trial Judge has rightly decided the issues and passed the final order dated 29th January 1992 ?	Yes,
(2) Whether it is necessary to interfere with the findings and/or the final order dated 29th January 1992 ?	No,
(3) What order ?	As per the final order below.

Reasons

7. It is not disputed that the Complainants were in the employment of the Respondent company and they were issued the show cause notices dated 5th April 1988 on the allegations that they had proceeded on strike on 1st April 1988, they instigated other workmen to remain absent from work and they thereby committed breach of the settlement dated 30th August 1986. Then, the Respondent company informed them *vide* its letters dated 9th April 1988 that the disciplinary action would be taken against them as per the model standing orders. Thereafter the Respondent company discharged them from service by the company's letter dated 4th May 1988.

8. It is one of the allegations in the chargesheets that the Complainants committed breach of the settlement dated 30th August 1986. But no any such settlement was placed on record by the Respondent company. The Trial Judge has also made it clear in his judgement that there is no record of the settlement dated 30th August 1986.

9. The Respondent company came with the case that the Complainants remained absent from duty, therefore, their enquiry was proceeded *exparte* against them and there was no alternative than to close the enquiry/to complete the enquiry proceedings *exparte*. However, it appears from the evidence on record that the Complainants appeared in the enquiry proceedings and sought time for one week for filing their explanation and they were granted time upto 23rd April 1988 for giving their explanations/replies to the allegations made against them. Under the circumstances, the enquiry was completed on 20th April 1988. Thus, it is surprising that the enquiry came to be concluded on 20th April 1988, though the Complainants were granted time to file their explanations/replies on or before 23rd April 1988. Then, on the basis of such enquiry, the termination letters dated 21st May 1988 were issued to the Complainants. On the evidence, the Trial Judge has rightly held that the enquiry is illegal and it is not an enquiry as no notice was issued to the Complainants before passing punishment orders. Even no such evidence of the notice was produced on record.

10. The Trial Judge has noted several discrepancies and infirmities in the evidence of the Enquiry Officer Shri N. K. Uppal, that (1) he has stated that he recorded the evidence of Shirin and Lucas in his own hand writing. But in the cross examination, he has stated that he recorded their evidence on his typewriter ; (2) he has stated in his examination in chief that he held the enquiry and it was only for obstruction by the Applicants to other workmen and not in respect of breach of the settlement, strike or about instigation of other workmen. This fact shows that the enquiry was not held for the charges levelled against the Complainants ; (3) his enquiry report shows that the allegations in the chargesheets were not enquired into by him; (4) he also relied on the documents, which were not produced in the complaints ; (5) his evidence shows that he carried out the enquiry as per the instructions of the superiours, etc. On all these discrepancies and infirmities, the Trial Judge has held that the enquiry carried out by the enquiry officer is in utter disregard of the principles of natural justice.

11. The Trial Judge has quoted relevant portion of the deposition of the enquiry officer, which shows that the enquiry officer made false statement with a view to help the Respondents.

12. It was the case of the Respondent company that the Complainants were sent the notices dated 16th April 1988 and 20th April 1988 and they were called upon to remain present in the enquiry, but no such proof of such letters was produced on record. The enquiry officer has stated in his evidence that he had included these two letters in his enquiry report/ proceedings. But, later on, he has admitted that no such letters were produced or included in the enquiry report. It is also to be noted that the enquiry officer was appointed on 12th April 1988. But, he has stated that on 9th April 1988, he had told Shirin to write the letter and Shirin wrote the letter on the same day to the Complainants for the enquiry fixed on 16th April 1988. Shri Shirin was the Manager and the Enquiry Officer was the Supervisor. If it is so, it does not appear Probable that the Enquiry Officer could ask his Manager to write a letter. Secondly, on 9th April 1988, he was not concerned with the enquiry proceedings. Further, the evidence of the enquiry officer shows that the Respondent company did not produce any proof to show that the Complainants were intimated by letters dated 9th April 1988 about the enquiry date, time and place. Thus, the evidence of the Complainants remained unrebutted that no intimation or notice was given them about the enquiry.

13. From the above discussions, it appears that the Trial Court has rightly held that there is no enquiry at all and the termination of their service is illegal. It is also in violation of the principles of natural justice. Even if it is pressumed that such enquiry was conducted against the Complainants, the punishment of termination of service is unjustified and disproportionate. Therefore, it appears that the Trial Court has rightly decided the issues and passed the final order.

14. The learned Advocate for the Complainants has relied on two cases. The first case is Between Vitthal Gatalu Marathe And Maharashtra State Road Transport Corporation & others, reported in *1995 I CLR 854 (Bom.)* and the second case is Pest Control of India Pvt. Ltd. *V/s.* PCPL Employees All India Union, reported in *1994 I CLR 230 (Bom.)*. Both these cases are on the point of scope of powers of the Industrial Court and jurisdiction of the Industrial Court of superintendence under Sec. 44 of the MRTU & PULP Act. From the observations in both these cases, it appears that this Court has limited jurisdiction under Sec. 44 of the MRTU & PULP Act, and this Court cannot reappreciate the evidence and overturn the findings of the Trial Court. The learned Advocate for the Respondent company could not point out any perversity to reappreciate the evidence or to remand the matter to the Trial Court for deciding afresh. It is, therefore, not necessary to overturn the findings or reappriciate the evidence.

15. The learned Advocate for the Respondent company has submitted that this is a fit case for remanding the matter for enquiry to lead evidence on the misconduct and decide the matter afresh. This is not a case that no enquiry was held. The Respondent company has come with the case that they held the enquiry, recorded the evidence and then took action against the Complainants. Secondly, the question before the Trial Judge was as to whether the Respondent company had committed unfair labour practices. Therefore, it is not necessary to remand the matter to the Trial Court.

16. From the above discussions, it appears that the Trial Court has rightly decided the issues, recorded his findings and passed the final order allowing the complaints. It is, therefore, not necessary to interfere with the findings or the final orders. In the result, the Point No. (1) is decided in the affirmative and the Point No. (2) is decided in the negative.

17. In view of my findings on the above points both the revision applications deserve to be dismissed. Hence order :—

Order

Revision Application (ULP) Nos. 33/1992 and 34/1992 are hereby dismissed. No order as to costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
Dated the 16th March 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 11th April 2002.

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BEFORE SHRI U. R. PATIL, PRESIDENT, INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI.

REVISION APPLICATION (ULP) No. 168/2001-IN-COMPLAINT (ULP) No. 257/1998—The General Manager, The BEST Undertaking, BEST Bhavan, Mumbai 400 001.—*Applicant*—*V/s.*—Shri Vishwas Abaji Dhumale, Mukundrao Ambedkar Nagar, Room No. 152, Grop No. 4, Hariyali Village, Tagore Nagar, Vikhroli (E), Mumbai 400 083—*Respondent.*

In the matter of Revision U/s. 44 of the M. R. T. U. & P. U. L. P. Act, 1971.

CORAM.— Shri U. R. Patil, President.

Appearances.— Shri. M. Nair, Ld. Advocate for the Applicant.
Respondent absent, though served.

Oral Judgments

(Dated the 19th April 2002)

The Revision Application is preferred by the BEST Undertaking feeling aggrieved of the judgment and order dated the 30th August 2001 whereby the 10th Labour Court, Mumbai partly allowed the complaint of the Complainant and thereby directed the Opponent BEST Undertaking to reinstate the Complainant without backwages and continuity of service *w. e. f.* 28th June 1997 within 30 days from the date of the order.

2. Brief facts giving rise to the case may be summarised as follows :—

Record reveals that Shri Vishwas Abaji Dhumale joined the services of the BEST Undertaking as a 'Cleaner' in Transportation Engineering Department *w. e. f.* 21st May 1974. The said Cleaner remained absent from duty for about 36 days in between August, 1996 to April, 1997 and therefore a charge-sheet under S. O. 20 (f) "habitual absence without leave or absence without leave for more than fifteen consecutive days or overstaying sanctioned leave without sufficient grounds or proper or satisfactory explanation." was issued on 5th June 1997. In the departmental enquiry, the delinquent did not participate, though the charge-sheet was served. The Enquiry Officer conducted the enquiry *exparte* and dismissed him from the services *w. e. f.* 28th June 1997. After exhausting the departmental procedure, the Complainant has filed the present complaint under item 1(*a*), (*b*), (*d*), (*e*), (*f*), and (*g*) of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971.

3. The grievance of the Complainant is that the enquiry conducted against him was in haste and not following the principles of natural justice. It is contended that he was taking treatment in Thane Mental Hospital when the enquiry was for the first time fixed on 18th July 1997. It is stated that on the second date of enquiry *i.e.* 26th July 1997 also he was taking treatment in Thane Hospital and the said fact was informed to the Respondent, but the Respondent in haste has dismissed the Complainant from services. It is alleged that the action of the Respondent is by way of victimisation, not in good faith, but in colourable exercise of the employer's right and it was done for patently false reasons, It is contended that his family consisted of aged parents, wife and school going children. According to him, considering the length of service *vis-a-vis* the minor misconduct, the punishment of dismissal is shockingly disproportionate. Thus on these and other grounds the Complainant prayed a declaration that the Respondents have engaged in the unfair labour practices under the items referred to above and to cease and desist from engaging so. He further prayed for direction to the Respondents to reinstate him with full backwages and continuity of service *w. e. f.* 28th June 1997.

4. The Respondents resisted the complaint by filing Written Statement at Exh.C-3 and the same be briefly stated as follows :—

It is submitted that the Complainant remained absent for 36 days in between August, 1996 to April, 1997 without any sanction of leave and therefore a charge-sheet under S. O. 20 (f) was issued. It is asserted that after receipt of the report, and issuance of charge-sheet, a departmental enquiry was conducted by one Shri Nalawade, who is the Labour Officer (Transport). It is the main contention that the enquiry was fixed on 26th June 1997 and the said date was communicated to the Complainant by letter dated the 19th June 1997 which was received by him, on 20th June 1997. Even then the Complainant reamined absent before the Trying Officer on 26th June 1997 and therefore there was no any alternative before the Enquiry Officer, but to proceed with the enquiry *exparte*.

5. It is stated that after considering the evidence led before the Trying Officer, he came to the conclusion that the charge levelled against the delinquent under S. O. 20 (f) has been proved and considering the past service record which was unsatisfactory, the Enquiry Officer ordered for dismissal *w. e. f.* 28th June 1997. It is also stated that the dismissal *w. e. f.* 28th June 1997. It is also stated that the Complainant was punished on 8 occasions and there was no improvement in the service record. On these and other grounds it is denied that the action of the Respondent was not in good faith and he was punished for minor incident. It is submitted that the punishment of dismissal is not shockingly disproportionate and lastly requested to dismiss the complaint.

6. I have called for the record and proceedings and gone through the same. Heard Mr. M. Nair, Ld. Representative for the Applicant. The following points arise for my determination with my findings thereon, as below :—

Points	*Findings*
(1) Whether the Revision Appln. (ULP) No. 168/2001 is to be allowed by setting aside the impugned judgment and order dated the 30th August 2001 passed by the 10th Labour Court, Mumbai ?	Yes.
(2) What order and relief ?	Please, see order below.

Reasons

7. *Point No. 1.*—In the beginning it is necessary to place on record that the Revision in question was placed on board on 31st January 2002 for argument. The Respondent was present in person and on his request the Revision was adjourned time and again for engaging the Advocate *viz.* Mr. S. A. Khanolkar. The Revision was placed on board on 18th April 2002 on which date Respondent was absent and Mr. S. A. Khanolkar, Ld. Advocate was present. He was asked to file the vakalatnama, but he could not and in his presence last chance was granted for hearing the Revision on 19th April 2002. Today when the matter was called out at 11 a. m. and 11.45 a. m. the Applicant's Ld. Representative Mr. M. Nair was present and the Respondent remained absent. Hence, the Revision is disposed of as follows on merits.

8. At the initial stage, it is necessary to state that both the parties before the Labour Court field pursis Exh. CU-1 contending that they did not want to lead oral evidence and also fairly conceded that there are not going to dispute the Issue Nos. 1 and 2 which are in respect of conducting the enquiry in fair and proper way and also to whether the findings of the Enquiry Officer are perver. In view of this position, the question remains for consideration only whether the punishment of dismissal awarded *w. e. f.* 28th June 1997 is shockingly disproportionate or not and whether the Complainant is entitled for the relief of reinstatement with full backwages and continuity of service, as prayed.

9. Now I have to see whether the impugned order passed by the Ld. Labour Court particularly allowing the complaint, as referred earlier, it to be set aside or not in Revision, as contended in the memo of Revision by the Applicant. It is important to note that Mr. Vishwas Dhumale remained absent for 36 days from August, 1996 to April, 1997 and for that purpose, a charge-sheet under S. O. 20 (f) was issued on 5th June 1997. Record reveals that despite the service of the charge-sheet on 20th June 1997, the Complainant remained absent before the Enquiry Officer and therefore the Trying Officer proceeded *ex parte* in conducting the enquiry. Therefore the position is clear that in the departmental enquiry, the delinquent employee *viz.* Shri Dhumale (Cleaner) did not participate and therefore there was no challenge to the charge levelled against him under S. O. 20 (f). Record reveals that the delinquent had preferred 2 appeals, but the same came to be rejected on 8th August 1997 and 7th November 1997 respectively and thereafter the Complainant filed the complaint before the Labour Court on 17th April 1998. The Labour Court on hearing the submissions advanced by the parties, passed the impugned order, detailed above, holding that the charge levelled against the delinquent was for minor misconduct *i. e.* of absenteeism of 36 days and therefore the punishment of dismissal awarded by the Trying Officer is shockingly disproportionate and partly allowed the complaint in favour of the Complainant.

10. It is important to note that the Complainant stated in the complaint that on certain days he was not well and therefore taking treatment from Thane Hospital. He has also stated that on the date of enquiry *i. e.* 26th June 1997 he was not keeping well and taking treatment at Thane. On carefully going through the record and proceedings, it shows that the Complainant though stated about his illness and medical treatment, but has not produced the medical certificate before the Trying Officer and even before the Labour Court. Meaning thereby the contention of the Complainant that he was not keeping well and therefore remained absent is not supported by any medical evidence or documentary evidence and therefore the Enquiry Officer has rigthly held that the charge levelled under S. O. 20 (f) has been rightly proved and awarded the punishment of dismissal w. e. f. 28th June 1997.

11. I am aware that the Complainant has stated that if the punishment of dismissal is not aside, then in that case, his aged parents, wife and school-going children which are depending upon him will be deprived of bread and butter and therefore requested for showing leniency and to set aside the order of dismissal. I am not inclined to accept the contention raised in the complaint before the Labour Court for the simple reason that when the Complainant remained absent for 36 days for the period detailed above, it was his duty to inform the BEST Undertaking by submitting an application alongwith the medical certificate because at the relevant time the Complainant was residing at Mukundrao Ambedkar Nagar, Room No. 152, Group No. 4. Hariyali Village, Tagore Nagar, Vikhroli (E), Mumbai-400 083 and it was quite easy and convenient for him to inform the BEST Undertaking, but he failed to do so. It is also necessary to place on record that the service record of the Complainant was not satisfactory and he was punished on 8 occasions and reduced by one grade for 6 months or a year. On one occasion, for the same misconduct, he was suspended for 2 days and on one occasion he was reduced in grade by 2 steps permanently. In substance, it clearly shows that despite the several punishments for remaining absent, the delinquent employee has not shown any improvement in his attendance record and therefore such an employee does not deserve any sympathy.

12. In carefully going through the impugned judgment of the Labour Court, it appears that despite the eight punishments, referred to above, the Ld. Labour Court has committed an error in holding that the charge of absenteeism is a minor one and the punishment of dismissal is shockingly disproportionate. The said observation of the Labour Court is not consistent to the facts and circumstances on record when particularly the delinquent employee despite the service of the charge-sheet remained absent. This conduct on his part shows that he had not bothered about the consequences of departmental enquiry. As detailed earlier, the two departmental appeals preferred by the delinquent were rejected because there was no substance.

13. I am aware that the Complainant is a Cleaner and it was canvassed before the Labour Court that the job of the Complainant is not like a Bus Conductor or Bur Driver or Mechanic and therefore there was no economic loss to the BEST Undertaking for his remaining absent. The said contention raised before the Labour Court is not proper because the absenteeism on the part of the workman cannot be compared with the absenteeism of other employees who are in technical department or driver, etc. But one has to see whether the employee is remaining absent time and again for a considerable period and thereby it has caused inconvenience to the employer *i. e.* BEST Undertaking. In a case reported in *2000 I CLR 545* (M. D. Kawade & anr. *V/s.* Mahindra Engg. and Chemical Products Ltd. Pune and anr.), our Bombay High Court has while holding that the misconduct of habitual absentism of petitioner workman was duly proved and his dismissal was proved, observed that a workman must be always 'at work' and not 'away from work' and that should be our 'work culture'. In the present case, as mentioned above, despite various chances granted to the delinquent employee to improve his attendance, he has failed to do so and therefore such an employee deserves punishment of dismissal only. The observations made by the Labour Court for showing sympathy on considering the length of service of about 23 years cannot be the criteria for holding that the punishment of dismissal *vis-a-vis* the charge under S. O. 20 (f) is shockingly disproportionate. The interference and discretion of the Labour Court is to be exercised exceptionally considering the facts and circumstances to interfere in the order passed by the Trying Officer and it cannot be liberally exercised when the past record of the delinquent is not satisfactory. Hence, as discussed above, the submissions of Mr. Nair for setting aside the impugned order is proper and I am convinced to exercise the powers U/s. 44 of the M.R.T.U. and P.U.L.P. Act for setting aside the order passed by the Labour Court. Therefore, I answer the Point No. 1 in the *Affirmative.*

14. *Point No. 2* : In view of the foregoing reasons, I pass the following order :—

Order

Revision Application (ULP) No. 168 of 2001 is allowed.

The impugned order dtd. 30th August 2001 passed by the 10th Labour Court, Mumbai is set aside.

No order as to cost.

R and P be sent back.

U. R. PATIL,
President,
Industrial Court, Mah., Mumbai.

Mumbai,
dated the 19th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the May 2002.

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IN THE INDUSTRIAL COURT AT MUMBAI

REVISION APPLICATION (ULP) No. 203 of 2001-IN-COMPLAINT (ULP) No. 306 of 1985—Roche/Anglo French Employees Union, 28, Tardeo Road, Mumbai 400 034.—*Applicant—Versus.*—(1) The Anglo-French Drug Co., (E), Ltd., having its Registered Office at Rajan House, Appasaheb Marathe Marg, Mumbai 400 025, *And* Having an establishment at 46/47 Jerbai Wadia Road, Parel, Mumbai-400 012, (2) The Hon'ble First Labour Court, Mumbai 400 051—*Opponents.*

REVISION APPLICATION (ULP) No. 208 of 2001—Anglo-French Drugs and Industries Limited, (Formerly known as Anglo-French Drug Co., (E) Ltd.), having its registered office at 41, 3rd Cross, V Block, Rajajinagar, Banglore-560 010.—*Applicant—Versus.*—(1) Roche/Anglo French Employees Union, 28, Tardeo Road, Mumbai 400 034, (2) Shri D. D. Kamble, Presiding Officer, First Labour Court, Mumbai—*Opponents.*

In the matter of Revision applications under Sec. 44 of the M. R. T. U. and P. U. L. P. Act, 1947 against the order and judgement dated 20th November 2001 passed by the Labour Court, Mumbai, in complaint (ULP) No. 306/1985.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Ms. Hutexi Tavadia Advocate for Complainant Union.

Mr. C. V. Pawaskar Advocate for the Company.

Common Judgement and Order

1. The Applicant union in Revision Application (ULP) No. 203 of 2001 *i.e.* the Opponent in Revision Application (ULP) No. 208 of 2001, was the Complainant in the complaint being complaint (ULP) No. 306 of 1985 filed against the Opponent company in the former revision application *i.e.* the Applicant company in the latter revision application. The said complaint was filed for the unfair labour practices under item 1(a), (b), (d) and (f) of Sch. IV of the M.R.T.U. and P.U.L.P. Act before the Labour Court, Mumbai. (Hereinafter the Applicant union in the former case is referred to as the Complainant union and the Opponent company is referred to as the Respondent company).

2. The Complainant union had approached the Labour Court with the following facts :—

The Respondent company is having its factory at Banglore and its registered and distribution office including the Stores is at Parel, Mumbai. It has also its Marketting and Material Management Division at Worli, Mumbai. The Complainant union represents all the workmen of the Respondent company at Mumbai as well as Banglore and it is a recognised union in the Respondent company. It is alleged that the Respondent company had made a concrete commitment in the meeting held on 2nd October 1984 between the Complainant union and the Respondent company. Later on, the Respondent company failed to follow the commitment, therefore, the workers proceeded on one day strike to protest the Respondent company by giving it the strike notice. The Complainant union also withdrew all the non obligatory co-operation and decided to stage the agitation of peaceful and non-co-operation, which started from October, 1984. Then, the Respondent company suspended 6 employees on flimsy grounds in November/December, 1984. The Respondent company also withdrew lunch allowance, illegally deducted the wages for the month of December, 1984 and issued a notice of change dated 30th November 1984 for reducing the dearness allowance. The Complainant union challenged the same and it is pending in the conciliation. It is further contended that the Respondent company displayed a notice dated 10th December 1984 threatening to shift the entire establishment in Mumbai and to transfer all the workmen to Banglore. The Complainant union replied the said notice *vide* its letter dated 26th December 1984 and

thereby informed the Respondent company that the said notice was illegal. In fact, the Respondent company was not empowered to transfer the workmen out of Mumbai as per the contract of service. Then, the Respondent company started giving letters to the workmen individually from December, 1984 and called upon them to accept the transfer to Banglore. Again, the Complainant union issued a letter dated 4th February 1985 to the Respondent company for withdrawal of the transfer letters. The Complainant union also sent letter dated 7th February 1985 to the Commissioner of Labour (Conciliation) requesting him to intervene and admit its demands dated 4th February 1985. Later on, the Commissioner of Labour (Conciliation) admitted the same in conciliation on 28th February 1985 and the said conciliation proceeding is still pending. It is further alleged that during pendency of the conciliation proceedings, the Management of the Respondent company started threatening the workmen with discharge, dismissal, closure etc. Again, the Complainant union addressed additional demand dated 6th March 1985 to the Respondent company. The Conciliation Officer also admitted the said demands dated 6th March 1985 and it is still pending. It is further contended that during pendency of the proceedings in conciliation, the Respondent company issued a notice of closure dated 4th April 1985. On the said notice of closure, the Complainant union informed the Respondent company that the said notice of closure is illegal and requested it for its withdrawal. It is further contended that there were serveral meetings before the Commissioner of Labour. But the negotiations with the Respondent company were not materialised, therefore, the Complainant union served a notice of strike and as per the said strike notice, the workers proceeded on strike with effect from 22nd January 1985. Later on, the Management of the Respondent company refused, to give work to the workmen. Later on, the Complainant union issued a letter dated 6th February 1985 to the Respondents company for amending the said strike notice and then the Complainant union withdrew the strike with immediate effect by the notice dated 10th May 1985 served on the Respondent company. However, the Respondent company did not allow the workmen to resume their duties. It is further contended that the Respondent company displayed a notice dated 10th May 1985 stating that its establishments at Parel and Worli had already been shifted to Banglore. The Respondent company had also informed that the activities of the Administration and Personnel Departments were in the process of being shifted to Banglore from 14th June 1985. Thus, the Respondent company did not allow the workmen to resume their duties, though the strike was withdrawn on 10th May 1985. It is further contended that thereafter the Respondent company started issuing termination letters to all the workmen and offered them one month's wages in lieu of notice. Then, the Complainant union issued a letter dated 24th July 1985 calling upon the Respondent company to withdraw the notices of termination dated 20th July 1985 and to reinstate the workmen with full back wages and continuity of service. The said notices of termination are not only illegal, but are in contravention of Sec. 33 (1) of the Industrial Disputes Act. It is further contended that the notice of termination is the illegal retrenchment and not a closure and it is in contravention of the provisions under Sec. 25-F of the ID Act, as the notice pay and retrenchment compensation were not paid or offered to the workmen. Secondly, the activities of the Respondent company at Mumbai were not completely closed, therefore, it cannot be said to be the closure as per the law. The fact that the Respondent company has illegally terminated the services of the workmen on 10th May 1985 and 14th June 1985 also shows that the closure is illegal. The act of the Respondent company with regard to the termination amounts to punitive action under the standing order and it is without enquiry. It is also *malafide* and colourable exercise of the management's powers constituting victimization. Thus, the Respondent company is engaged in unfair labour practices under item 1 (a), (b), (d) and (f) of Sch. IV of the M.R.T.U. and P.U.L.P. Act, hence the complaint, for the reliefs with full back wages and continuity of service.

3. The Respondent company filed its written statement in the complaint and thereby denied the claim of the Complainant union.

4. The complaint firstly came to be decided by the Labour Court on 16th June, 1994. Being aggrieved by the said judgement and order, both parties filed their respective revision applications being Revision Application (ULP) No. 89 of 1994 and 102 of 1994 respectively. On hearing of both parties, the Industrial Court decided both the revisions together and disposed of the same by its common order dated 3rd September 1996 and thereby remanded the matter back for deciding the two issues. After remand the Labour Court decided the complaint afresh on 23rd April 1997. Being aggrieved by the said judgement and order dated 23rd April 1997, again both parties file the revision applications being Revision Applications (ULP) No. 126 of 1997 and 176 of 1997 against each other before the Industrial Court. The Industrial Court decided both the revision applications on 21st September 1999 by the common judgement and order and again remanded the matter back to the Labour Court for deciding the matter afresh. The Labour Court again decided the complaint at third time on 17th June 1999 and again both the parties filed their revisions being Revision Applications (ULP) No. 87 of 1999 and 101 of 1999 against each other before the Industrial Court and again the Industrial Court decided both the said revision applications together and disposed of both the revision applications by passing common judgement and final order dated 26th April 2001 and thereby the matter was again remanded back to the Labour Court for deciding both the issues and the main complaint afresh. After remand, the Labour Court decided both the issues and the main complaint on 20th November 2001 and thereby granted the relief of reinstatement to the employees, who have not crossed the age of superannuation, with 50% back wages and continuity of service from the date of termination of their services. Being aggrieved by the said judgement and final order dated 20th November 2001, both the parties have filed the present revision applications against each other on the grounds as set out in their respective revision applications. The Complainant union has filed the former revision application being Revision Application (ULP) No. 203 of 2001 and thereby challenged the order of 50% back wages. Since the said order of reinstatement is not specifically directing the Respondent company to allow the workmen to reinstate at Mumbai, the order of reinstatement to that extent is also challenged by the Complainant union in its revision application, while the Respondent company has challenged the findings of the Labour Court on both the issues as well as the final order dated 20th November, 2001, by filing later revision application being Revision Application (ULP) No. 208 of 2001.

5. Heard the learned Advocates for both parties. On considering their arguments, written arguments and the facts placed on record, the following points arise for my determination and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the Trial Court has rightly decided both the issues and passed the final order dated 20th November 2001 ?	Yes, except the final order granting back wages.
(2) Whether it is necessary to interfere with the findings of the Trial Court on both the issues and/or its final order dated 20th November 2001?	Does not require to interference in finding but require to modify final order.
(3) What order ?	As per the order below.

Reasons

6. Firstly, I would like to discuss the observations in the Supreme Court and the High Court cases cited by the learned Advocate for the Complainant union on the point of scope of Sec. 44 of the M.R.T.U. & P.U.L.P Act.

These cases are as under :—

(1) 1995 I CLR 854 (Bombay);
Vithal Gatlu Marathe *V/s.* MSRT Corpn. & Ors.

(2) 1998 I CLR 1205 (Bombay);
Gajanan Shamrao Thakre *V/s.* MSRTC, Parbhani.

(3) 1997 I CLR 868 (Bombay);
Kirloskar Cummins Ltd. *V/s.* Subhash Shripati Darekar & Ors.

(4) 1994 I LLN 112 (Bombay);
Pest Control (India) Pvt. Ltd. *V/s.* Pest Control (India) Ltd. Employees All India Union & Ors.

(5) 2000 I CLR 806 (Bombay);
Ammunition Factory Co-op. Credit Soc. Ltd. *v/s.* Balasaheb Ramchandra Ghule & others.

(6) 1991 II CLR 574 (Bombay);
Janata Sahakari Bank Ltd. *V/s.* DH Chhatbar & Ors.

From the observations in the above cases, it appears that the Industrial Court has restricted jurisdiction under Sec. 44 of the MRTU & PULP Act to interfere with the findings of fact and it arises only if the findings are perverse. The Industrial Court cannot re-appreciate the evidence, re-assess the evidence, re-assure the evidence and cannot substitute its own findings as an appellate Court. In the light of the above observations, both the present revision applications can be examined and disposed of.

7. Lastly, the case was remanded to the Labour Court with a direction to decide both the issues and to decide the complaint finally afresh. These issues are as under :—

(1) Whether the discharge or dismissal was by way of victimisation, and

(2) Whether it was not *bona-fide,* but in colourable exercise of the powers of the employer.

After remand, the parties did not produce any fresh evidence, as the evidence was already produced on record. The Complainant union examined only two witnesses *viz.* at Exh. U-44 and U-47. The Respondent company had also examined two witnesses at Exh. C-21 and C-24. Besides the oral evidence of these witnesses, both parties had relied on the documentary evidence placed on record.

8. From the facts on record and the chronological events given by the parties, it appears that the dispute between the parties started on account of issue of bonus from October, 1984. On that count, some workers were suspended. Thereafter, the Respondent company issued the transfer orders to all the workmen on 21st December 1984 and thereby transferred them to Banglore. The Complainant union, therefore, gave a notice of strike dated 8th January 1985 and as per the said strike notice, the strike was commenced from 22nd January 1985. On receipt of the said notice, the workmen were not allowed to enter the factory premises. On 4th February 1985, the workmen put up a demand and approached the Labour Commissioner for intervention. On 28th February 1985, the demand/dispute was admitted in conciliation. Again, the Complainant union put up a demand asking the Respondent company that the services of the workmen should not be terminated by way of discharge or dismissal. Then, the Respondent company

issued the notice of closure dated 4th April 1985. In the next month, *i. e.* in the month of May, 1985, the Complainant union requested the Respondent company to start the company, but no use. Then, the Respondent company issued the transfer letters to all the workmen by giving them three months time to report for duty at Banglore, therefore, the complaint in the instant case came to be filed in the Labour Court. From all these facts, one things is clear that the conciliation proceedings were pending before the Conciliation Officer, and during the pendency, the notice of closure and the transfer letters came to be issued.

9. It is the case of the Complainant union that permission under Sec. 33 (*1*) of the ID Act was required to be obtained for closure, but the Respondent company violated the said provision. Further, it is the case of the Complainant union that during the conciliation, the services of the workmen came to be terminated. It is the case of the Respondent company that Sec. 33 (*1*) of the ID Act does not apply to the present case. Therefore, it is necessary to see the provision of Sec. 33 (*1*) of the Industrial Disputes Act, 1947, which is as under :

> "33 (*1*) : During the pendency of any conciliation proceedings before a Conciliation Officer or a Board or of any proceedings before an arbitrator, a Labour Court or Tribunal or National Tribunal in respect of an Industrial dispute, no employer shall,
>
> (*a*) In regard to any matter connected with dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceedings; or
>
> (*b*) For any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,
>
> save with the express permission in writing of the authority before which the proceeding is pending."

10. In the present case, the Respondent company terminated the services of the workmen though the conciliation proceedings were pending before the Conciliation Officer. The evidence of both the officials of the Respondent company/also shows that the company was aware of the proceedings pending before the Conciliation Officer at the time of issuance of the termination letters. These facts were also pleaded in the complaint by the Complainant union.

11. It is not disputed that meanwhile, the complaint being complaint (ULP) No. 353 of 1987 was filed in the Industrial Court, Mumbai, by some workmen against the Respondent company, for declaration of unfair labour practice under item 9 of Sch. IV of the M.R.T.U. and P.U.L.P. Act, and also for declaration that the closure effected by the Respondent company from 3rd July 1985 be declared to be void. The said complaint came to be dismissed. Against the said order, the workmen filed a writ petition being Writ Petition No. 730 of 1995 before the Hon'ble High Court of Bombay, but the same came to be rejected. On perusal of the documents filed alongwith the list Exh. C-6 in the present revision applications, it appears that the Industrial Court came to the conclusion that there was no evidence led by the workmen to show that there were more than 100 workmen in the employment of the Respondent company and, therefore, the Industrial Court dismissed the said complaint. In this connection, the learned Advocate for the Complainant union has submitted that the complaint in the present case involves the issue with regard to the termination of service, and the Complainant union has prayed for declaration of unfair labour practice on the ground of hasty action of termination of service taken by the Respondent company during pendency of the conciliation proceedings under Sec. 33 (*1*) of the ID Act, The issues, which the Trial Judge has decided, are not connected with the issue of closure. From all these facts, it appears that the complaint being complaint (ULP) No. 353 of 1987 has no concern with the present case.

12. On 10th December 1984, the Respondent company displayed a notice at Exh.U-42 shifting its entire establishment at Mumbai and transferring all the workmen to Banglore. Then, the Respondent company issued the transfer letters Exh. U-46 to the workmen individually on 21st December 1984. On this notice and the letter, the Trial Judge has come to the conclusion that there was no mentioning about the closure of the establishment at Mumbai either in the notice Exh. U-42 or in the transfer letter Exh. U 46. On perusal of the oral evidence of the Secretary of the Respondent company, it also appears that he has admitted all these facts.

13. So far as the advertisement published in the daily newspaper 'Lokasatta' dated 6th September 2001, is concerned, there is no dispute. On this point, the learned Advocate for the Respondent company has submitted that the said advertisement was for the legal representative and it does not show that the activities of the Respondent company are going on at Mumbai. On perusal of the said advertisement, it appears that the Respondent company had published an advertisement for medical service representative for the headquarters at Mumbai. On this point, the trial Judge has held that some activities of the Respondent company are still going on at Mumbai, and therefore it cannot be said that the Respondent company has totally closed its working at Mumbai.

14. On the facts, the Trial Judge has come to the conclusion that the Respondent company terminated the services of the workmen, though the conciliation proceeding were pending before the conciliation Officer. Therefore, the submissions made by the learned Advocate for the Respondent company cannot be accepted that the provision under Sec. 33 (*1*) of the ID Act is not attracted to the present case. There is no mentioning about the closure of the establishment at Mumbai in the notice or in the letter Exh. U-42 and Exh. U-46 respectively. The Respondent company has not obtained any permission from the Conciliation Officer for terminating the services of the workmen, though it was required under the law. The notice of closure was also issued during pendency of the conciliation proceedings. The fact of advertisement published in the daily newspaper Loksatta dated 6th September 2001 also shows that the Respondent company has not totally closed its working in Mumbai. So considering all these facts and the evidence on record, the Trial Judge has further come to the conclusion that the Respondent company has committed unfair labour practice by taking hasty action of terminating the services of the workmen during the pendency of the conciliation proceedings and the said action is in contravention of the provision of Sec. 33 (*1*) of the ID Act.

15. The learned Advocate for the Respondent company has relied on several case laws, as given along with the list Exh. C-6.

16. The first case is Shivaji A. More *V/s*. Estate Manager, Maharashtra State Farming Corporation Limited & Anr. reported in *1996 (72) FLR 447 (Bom.)* It is held by Their Lordships that in case of transfer, the order of transfer to be complied first before challenging it. In fact, in the said case the transfer was from one department to another department and the employee had not made out a *prima facie* case of unfair labour practice. The second case is between Sarva Mazdoor Sangh *V/s.* Innovation Garments Ltd. & Ors. reported in *1998 I CLR 278 (Bom.).* Wherein, it is held by Their Lordships that shifting of manufacturing activities from Mumbai to Musseoria amounts to closure. In the third case between Indian Hume Pipe Company Ltd. *V/s.* Their workmen, reported in *SCLJ (8) 1950-83 183.* It is also held in the said case that the Tribunal not to enquire into motive as to whether closure was justified or not. The fourth case is Shalimar Paints Ltd. *V/s*. Third Industrial Tribunal, Calcutta, reported in *1971 II LLJ 58 (Cal.).* It is observed therein that the shifting of place of business does not amount to transfer. In the said case, the company had shifted its entire undertaking from Calcutta and moved its Head Office to Howrah and, therefore, the workmen claimed extra travelling allowance. On the

facts, Their Lordships have observed as above. In the present case in hand, the transfer is from one city to another city at the long distance in another State. Further case is workmen of the Indian Leaf Tobacco Development Company Limited, Guntur, *V/s.* Its Management reported in *SCLJ (7) 1950-83 374.* Wherein, it is held by Their Lordships that the closure of some depots is permissible, and Tribunal cannot direct the Company to re-open the depots. In the present case, the facts are entire different. Further case is M/s. Bharat Iron Works *V/s.* Bhagubhai Balubhai Patel & Ors. reported in *SCLJ (12) 1950-83 333.* Wherein, it is held by Their Lordships that a person is victimised if he is made a victim, but there is no victimisation if actual fault is established. Further case is M/s. Parry & Co. Ltd. *V/s.* P. C. Pal, Judge of the Industrial Tribunal, Calcutta, reported in *SCLJ (8) 1950-83 47.* Wherein, it is held by Their Lordships that it is for the Management to organise and arrange its business in the manner it considers best. Further case is Pfizer Limited *V/s.* Mazdoor Congress & Others, reported in *1996 (74) FLR page 2198.* It is held therein by Their Lordships that the concept of undue haste depends on facts of the case. Further case is L. Robert D. Souza *V/s.* Executive Engineer Southern Railway reported in *1982 I LLJ 330 (SC).* Wherein, it is held by Their Lordship that the retrenchment does not amount to change in the condition of service.

17. The facts in the above cited cases and in the present case are not exactly similar. Secondly, the issues in the above cases is also different. In the present case, the Complainant union is seeking declaration of unfair labour practice on the ground of hasty action of termination of service during the pendency of the conciliation proceedings, which can be decided on the facts and the evidence on record.

18. Lastly, the learned Advocate for the Respondent company has relied on the case of Lokmat Newspapers Pvt. Ltd. *V/s.* Shankar Prasad, reported in *1999 II CLR 433, (SC).* It is held by Their Lordships that the discharge of the workmen did not amount to victimisation, as there were good grounds for termination. Similarly, the act of termination does not amount to colourable exercise of power. Again, the fact of the above case and the present case are different. In the present case, the demands were admitted in the conciliation and the conciliation proceedings were pending. The Respondent company was aware of the same. In the circumstances, the Respondent company terminated the services of the workmen during the pendency of the said conciliation proceedings. Therefore, the issues to be decided are :—

(1) Whether the discharge or dismissal is by way of victimisation, and

(2) Whether it was not *bonafide,* but in colourable exercise of the powers of employer.

Therefore, the ratio in the above said case of the Hon'ble Supreme Court cannot be made applicable to the facts of the present case.

19. From the above discussions, it appears that the Trial Judge has rightly decided that the Respondent company is guilty for the unfair labour practices, as alleged, by taking hasty action with regard to the termination of services of the workmen during the pendency of the conciliation proceedings, and the same is in contravention of the provisions of Sec. 33 (1) of the ID Act.

20. Though the Trial Judge has decided both the issues in the affirmative, the workmen are not allowed full back wages. On this point, there are only few lines in the judgement of the Trial Judge, which are as under :—

> "Here in this case, the Company has not adduced cogent and ample evidence to show that the workers represented by the Union are unemployed. Some of the workers became old. Under such circumstances, if back wages to the extent of 50% are granted as a consequential relief with continuity of service would be just in the interest of justice."

From the above para, it appears that the Trial Judge has not given any cogent reason for refusal to grant full back wages to the concerned workmen.

21. On the point of granting full back wages/part of the back wages, the learned Advocate for the Complainant union has relied on the following cases :—

(1) *1994 Supp (3) 671 Supreme Court Cases* Manorama Verma *Versus* State of Bihar & Ors.

(2) *1998 I CLR 1205 High Court Bombay,* Mohamadshah Hanishah patel & Anr. *Versus* Mastanbang Consumers Co-op. Wholesale and Retail Stores Ltd. & Anr.

(3) *1998 I LLJ 406 Madras High Court,* Parry & Company *V/s.* Presiding Officer, Second Addl. Labour Court, Madras & Anr.

(4) *1993 I LLN 199, Orissa High Court,* Food Corporation of India *V/s.* Industrial Tribunal, Bhubaneswar & Others.

(5) *1994 I CLR 878, Supreme Court* Shri Ishwarbhai B. Vhandra *V/s.* Union of India & Ors.

(6) *1998 (57) FLR 408 Supreme Court,* Maharaja Sayajirao University of Baroda & Ors. *Versus* R. S. Thakker.

(7) *1994 I CLR 878 Supreme Court,* Chaganlal Prahladrai Singhania *Versus* Maharashtra State Co-Op. Marketing Federation Ltd.

(8) *1997 II CLR 236, Madhya Pradesh High Court,* State of Madhya Pradesh & Others *Versus* Chhote Minya & Others.

From the observations in the above said cases, it appears that once the termination is found illegal, consequential relief to grant full back wages must follow, unless there are cogent reasons justifying the departure from the normal rule, or there is any evidence to show that the workman would have been gainfully employed. It further appears that it is not necessary to give reason for awarding full back wages, but it is only when the Tribunal continues full or part of back wages, it is incumbent on its part to give reason. It further appears that the burden is upon the employer to establish that the workman was gainfully employed. In the instant case, the Trial Judge has specifically mentioned in his judgement that the Respondent company has not produced any cogent evidence about gainful employment of the concerned workmen. However, the Trial Judge has granted 50% back wages without giving any reason. Therefore, the said order to that extent is to be modified, as it is against the general rule of granting full back wages, as observed in the above said cases.

22. From the above discussions, it appears that the Trial Judge has rightly decided both the issues and passed final order, except the order granting 50% back wages. It is, therefore, necessary to modify the said order to that extent and to grant full back wages, instead of 50% back wages. In the result, the Point No. (1) and (2) are hereby decided accordingly. With this, I proceed to pass the following order :—

Order

(1) The Revision Application being Revision Application (ULP) No. 203 of 2001 filed by the Complainant union is hereby allowed.

(2) The final order passed in complaint (ULP) No. 306 of 1985 is hereby modified in respect

of back wages as under :—

"It is hereby declared that the Respondent Company was involved in unfair labour practice to discharge or dismissal of workmen by way victimization. It was not *bonafide* but in colourable exercise of employer's right and in utter disregard of principles of natural justice. Accordingly, the Company is directed to reinstate the workmen, taking into consideration their age, if they are eligible for reinstatement on the ground of age and pay them 100% back wages with continuity of service from the date of their termination."

(3) Revision Application (ULP) No. 208 of 2001 filed by the Respondent company is hereby rejected.

(4) The Respondent company is hereby directed to comply with the above modified order, within a period of three months.

(5) No order as to the costs.

M. L. HARPALE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 11th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 19th April 2002.

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IN THE INDUSTRIAL COURT AT MUMBAI

COMPLAINT (ULP) No. 600/1996—(1) Maharashtra Association of General Workers, Kandivali West, Mumbai 400 067. (2) Mr. S. Velayutham, (Since deceased through his L. R.), (A) Smt. V. Kulalamani Widow, (B) Shri Kumarmangalam S. Velayutham Son, (C) Shri Krishna Memon S. Velayutham Son, (3) Mr. S. Stephen, (4) Mr. T. Sunder Rajan, Dharavi, Mumbai 400 017.—*Complainants—V/s.*— (1) M/s. Lalit Textile, (2) Shri Sushil Arora, (3) Shri Vijay Arora, Goregaon East, Mumbai-400 063—*Respondents.*

In the matter of complaint of unfair labour practices under item 1(a) (b), and 6 of Sch. II and under items 9 and 10 of Sch. IV of M. R. T. U. & P. U. L. P. Act, 1971.

Present.— Shri M. L. Harpale, Member, Industrial Court, Mumbai.

Appearances.— Shri B. Shukla Advocate for the Complainants
No appearance on behalf of the Respondents.

Judgement and Order

1. Initially, this complaint was brought by the Complainant No. 1 Union against the Respondents for having committed unfair labour practices under items 1(a), B) and 6 of Sch. II and under items 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971. Later on, 3 employees came to be joined as the Complainants Nos. 2 to 4. Then one of the employees/co-Complainants died leaving behind his wife and 2 sons. Therefore, his legal representatives came to be brought on record.

2. The case of the Complainants is as under :—

The Respondent No. 1 is a powerloom industry and the Respondents Nos. 2 and 3 are its Partners, who are looking after affairs of it. There were total 35 employees working in it, but it reduced the number of employees. At present, there are 7 workmen. It is further contended that the Respondents have removed 20 looms out of 40 looms and installed a new unit at Bhiwandi. Now, the Respondents are forcing the remaining 7 workmen to resign from the services, with a view that the unit can be operated on contract basis. It is further contended that the Respondents are giving continuous lay off to the remaining workmen and only paying 50% of their wages, which acts in contravention of the Model Standing Orders. It is further contended that the remaining workmen tried to organise under the banner of verious units, but no use. Lastly, the re-maining workmen joined the Complainant union. The Respondents got annoyed and threatened the workmen with consequence of termination of their services and the lay out Closure. The remaining workmen protested the said action of the Respondents. It is further contended that on 26th May 1996 at about 9.00 a. m., the Respondents attempted to remove the remaining looms from the factory and threatened the remaining workmen when they opposed for removal of the looms. Thus, the Respondents have engaged in unfair labour practices under item 1(a), (b) and 6 of Sch. II and under items 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act. Hence, this complaint for the reliefs in terms of prayers in the main complaint.

3. On appearance, the Respondents filed their reply to the application for interim relief Exh. U-2. But, later on, they failed to file their written statement to the main complaint.

4. My learned Predecessor framed the following issues *vide* Exh. O-3 and I have recorded my findings thereon for the reasons stated below :—

Points	*Findings*
(1) Whether the Complainant has proved that the Respondents have engaged in unfair labour practice under items 1 (a), (b) and 6 of Sch. II and under items 9 and 10 of Sch. IV of the M.R.T.U. & P.U.L.P. Act, 1971 ?	Yes.
(2) Whether the Complainants are entitled to get any reliefs as prayed for in this complaint ?	Yes.
(3) What order ?	As per the order below.

Reasons

5. Inspits of the notices, the Complainant union failed to remain present, when the complaint came to be fixed for evidence. The Respondents also failed to remain present. The Co-complainants employees and the legal representatives of the deceased Co-complainant were attending to the Court for the purpose of this complaint. Since the Respondents were not attending the Court, the Co-complainants employees and one of the legal representatives of the deceased Co-complainant filed their affidavits in lieu of examination in chief at Exhs. UA-9 to Exh. UA-11. Then the case was fixed for cross examination by the Respondents. But none of the Respondents appeared and cross examined the said Co-complainants and the legal representative.

6. It appears from the affidavits filed in lieu of examination in chief that the Co-complainants employees and the deceased Complainant were employed as weaver by the Respondent company. Later on, the Respondents started harassing them to accept the VRS as the Partners *i. e.* the Respondents Nos. 2 and 3 wanted to close down the Respondent No. 1 company. Then, the Respondents removed looms and machinery, tools etc. from the premises of the company for being installed at Bhiwandi. The Respondents also failed to pay their wages for the months of May, June and July, 1996. The Respondents also started threatening and giving lay-off from May, 1996 onwards. It further appears that they reported for duty upto 10th June 1996, but they were not paid their wages. Thereafter, they remained out of the factory as they were required to remain away from violence. From the evidence in the form of the affidavits, it appears that none of the Co-complainants employees and the deceased Co-complainants employee has neither resigned from services of the Respondent company, nor accepted the VRS. It further appears that the Respondents have not followed the procedure of closure. Therefore, they are entitled to full back wages from the month of June, 1996 onwards and also reinstatement with continuity of service. Since one of the Complainant is dead, his legal representatives are entitled to the full back wages of their predecessor from June, 1996 to the date of his death *i. e.* 30th January 2001.

7. From the above discussions, it shows that the Respondents have indulged in unfair labour practice, as alleged, and the Co-complainant employees as well as the legal representatives of the deceased Co-complainant employee are entitled to the reliefs as given above. In the result, the issues Nos. (1) and (2) are hereby decided accordingly. With this, I proceed to pass the following order :—

Order

(1) complaint (ULP) No. 600 of 1996 is hereby allowed.

(2) It is hereby declared that the Respondents have indulged in unfair labour practices under items 1(a), (b) and 6 of Sch. II and under items 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971.

(3) The Respondents are hereby directed to cease and desist from engaging in such unfair labour practices.

(4) The Respondents are hereby directed to pay full back wages with effect from June, 1996 onwards to the Complainant Nos. 3 and 4 with reinstatement and continuity of service.

(5) The Respondents are further directed to pay full back wages to the deceased Complainant No. 2 through his legal representative from June, 1996 till the date of his death *i. e.* 30th January 2001.

(6) The Respondents are hereby directed to comply with above both the orders within a period of 2 months.

(7) No order as to the costs.

M. L. HARPALE,

Member,

Industrial Court, Mumbai.

Mumbai,

Dated the 1st April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
Dated the 19th April 2002.

IN THE INDUSTRIAL COURT, MAHARASHTRA AT MUMBAI

BEFORE SHRI R. U. INGULE, MEMBER

COMPLAINT (ULP) No. 1038 OF 1996.—Mrs. Ramdulari Rajput Singh (Hamal), Ramdulari Chawl within Nanabhatt Chawl, Room No. 36, Nirmal Nagar, Khar (E.), Mumbai 400 051.—*Complainant—V/s.*—(1) R. A. Poddar Medical College, Worli, Mumbai 400 018, (2) The Administrative Officer, R. A. Poddar Medical College, Worli, Mumbai 400 018, (3) The Dean, R. A. Poddar Medical College, Worli, Mumbai 400 018.—*Respondents.*

In the matter of complaint of unfair Labour Practice under items 9 and 10 of Schedule IV of the M. R. T. U. & P. U. L. P. Act.

CORAM.— Shri R. U. Ingule, Member.

Appearances.— Shri G. C. Pathak, Ld. Advocate for the Complainant,
Smt. N. R. Patankar, Ld. Advocate for the Respondents.

Order

(Dated the 26th April 2002)

1. This complaint has been preferred U/s. 28 read with items 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P., 1971 (for short, MRTU & PULP Act) with a prayer to quash and set aside the departmental enquiry and direct the Respondents to allow the Complainant to resume her duties forthwith and pay the entire backwages w. e. f. 12th November 1994 and all consequential benefits to which she is entitled to.

2. Briefly stated facts giving rise to filing of the instant complaint are as under :—

Complainant's husband late Shri Rajput was employee as a permanent employee in the post of 'Hamal', who expired in the year 1987 and in his place, the Complainant came to be appointed as a Hamal. However, she was given the work of Peon. The Respondent has been a Ayurvedic Hospital. In 1992, the Complainant proceeded on leave to her native place and fell sick from July, 1992 to November, 1994. Though the Complainant belonged to District Pratapgad, she was required to go to District Jaunpur, where she was treated by Dr. R. C. Tiwari. With medical fitness certificate she made attempt to resume duties on 12th November 1994, but was not allowed. Complainant never received any show cause notice in respect of her alleged lapses of unauthorised absenteeism. The Complainant has been illiterate and a poor woman and she has not been given any opportunity to defend her case. The Complainant was neither allowed to resume duties nor suspended pending the departmental enquiry and she has not been paid any salary from 1994, and thereby adopted unfair labour practice under items 9 and 10 of Sch. IV. The Complainant was served with a letter dtd. 20th August 1996 informing her that pending the departmental enquiry, she will not be allowed to resume work. Hence, a prayer for granting the reliefs.

3. The Respondent Hospital by filing an affidavit at Exh. C-4 has resisted the contentions reised by the Complainant employee *interalia* on the grounds that the Respondent has been a Government Medical College, managed and controlled by Government of Maharashtra. It is, therefore, amenable to the provisions under the Administrative Tribunals Act, 1985 and not under the M. R. T. U. & P. U. L. P. Act and therefore the instant complaint has been bad-in-law. The Complainant cannot challenge the departmental enquiry and the termination in the instant complaint as the jurisdiction to deal with such controversy has been with the Labour Court under item 1 of Sch. IV. On 4th July 1992 the Complainant received a telegram from her native place and without getting the leave sanctioned, she went on unauthorised leave. In the

leave Application, she had gvien her address. At the said address, the Respondent Hospital had sent a letter dtd. 12th September 1992 directing her to report for duties immediately. However, the said envelope was returned to the Hospital unserved with postal remarks thereon. Thereafter the Complainant had addressed letters to the Respondent mentioning about illness of her daughter. Thereafter also the Respondent had directed the Complainant to report for duties immediately. The Respondent Hospital had sent a letter dtd. 11th November 1996 to the Complainant by hand-deliver through a Peon. The Complainant on understanding the contents therein have refused to receive such letter. Respondent also tried to serve the letter dtd. 11th November 1996 through Police Authorities, but in vain. The Complainant was not sick at her native place during any period and the reasons submitted by her for proceeding on leave has been totally false and frivolous. The Complainant has remained absent unauthorisedly. The Respondent till this date has not received any fitness certificate. Complainant could have participated in the departmental enquiry for defending her case. As such, no adoption of unfair labour practice by the Respondent Hospital.

4. In the aforesaid reival contentions, following issues have been framed at Exh. O-5 and my findings thereon, for the reasons given below there in, are as under :—

Issues	*Findings*
(1) Does the Respondents prove that this Court has no jurisdiction to try, entertain and decide the complaint and jurisdiction to decide the dispute is with the Administrative Tribunal ?	No.
(2) Does the Complainant prove that the Respondents have engaged in and are engaging in unfair Labour practices under items 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act, 1971 ?	Yes, under item 9.
(3) Whether the Complainant is entitled to the relief claimed in the complaint ?	Partly Yes.
(4) What order ?	Please, see final order.

Reasons

5. I have heard the Ld. Advocate Shri G. C. Pathak for the Complainant and Ld. Advocate Smt. N. R. Patankar for the Respondent Hospital at length.

6. *Issue No.* 1.—An attempt has been made on behalf of the Respondent Hospital to contend that the jurisdiction to try any dispute pertaining to service conditions of its employees vest with the Tribunals constituted under the Administrative Tribunals Act, 1985. In support of her contention, the Ld. Advocate Smt. N. R. Patankar has adverted to section 15. The Ld. Advocate has made an attempt to submit that U/s. 28, the Supreme Court and the Industrial Tribunal, Labour Courts or any other Authority constituted under the Industrial Disputes Act, 1947 or any other existing law for the time-being in force would have a jurisdiction to entertain the dispute pertaining to service matters. The Ld. Advocate further elaborated that the corresponding law that mentioned in section 28 (*b*) of the Administrative Tribunals Act would take in its sweep the law like U. P. Industrial Dispute Act, Bombay Industrial Relations Act, CP & Barer Act, but not the law like the M. R. T. U. & P. U. L. P. Act. I, therefore, find the controversy on this issue has been narrowed down to determine whether section 28 (*b*) takes within its

arrey the State Legislation like the M. R. T. U. & P. U. L. P. Act being any other corresponding law to that of Industrial Disputes Act, 1947. In my considered view, by now it has been well-settled that the Industrial Disputes Act, 1947 and the M. R. T. U. & P. U. L. P. Act are operating and functioning in the same field, that too in tandem and not in isolation. It has also been well-settled that the M. R. T. U. & P. U. L. P. Act supplement the Industrial Disputes Act, 1974 and not supplant the same. I, therefore, find that when the Ld. Advocate agrees to the concept that the corresponding law to the Industrial Disputes Act would be a State Act like the Bombay Industrial Relations Act, 1946. I don't find any reason why the M. R. T. U. & P. U. L. P. Act be singled out to be termed as not corresponding law to the Industrial Dispute Act. I find such contention raised by the Respondent Hospital being devoid or any merit.

7. *Issue No.* 2.—The Ld. Advocate Shri G. C. Pathak has candidly submitted at the Bar that in the instant complaint the Complainant has not been challenging the conduct of departmental enquiry into the misconduct ascribed to her or termination of her services therein. As such, the controvery to be resolved in the instant complaint has been narrowed down to entitlement of the Complainant to the wages alongwith other monetary benefits there to during the period from 12th November 1994 to 28th February 1997. I observe that in the praying clause in the complaint, the Complainant has accordingly claimed her payment of wages from 12th November 1994 till the date she is allowed to resume her duties. It falls for my determination, therefore, whether the Complainant has made herself available for rendering services to the Respondent Hospital on 12th November 1994 and whether she has been illegally and improperly denied renderance of such duties by the Respondent Hospital till 28th February 1997. Admittedly during the said period neither the Complainant was kept under suspension nor her services were terminated. I, therefore, proceed to advert to the relevant evidence in order to assess the merits in the contentions of either party to the litigation.

8. It has been pleaded by the Complainant that she received a telegram and therefore she was required to rush to her native place and she fell ill and therefore she was required to proceed on sick leave. On 15th November 1994 she had come to Mumbai alongwith a medical fitness certificate. However, she was not allowed to report for duties and on 15th November 1994 she was served with a letter by the Respondent Hospital enclosing therewith a letter purported to be 8th July 1993. It is, therefore, the Complainant has been contending that she has been illegally refused to resume duties by the Respondent Hospital from 15th November 1994 till 28th February 1997. In support of her contention, the Complainant has pressed into service a medical certificate issued by Dr. R. C. Tiwari dated the 9th November 1994 at Exh. 'A' to the complaint, stating therein that the Complainant was suffering from Grandmul Epilapsy from 27th July 1992 to 8th November 1994 and she was advised for year treatment regularly since the date of issuance of certificate *i.e.* 9th November 1994.

9. While countering the said contentions raised by the Complainant, the Ld. Advocate Smt. N. R. Patankar for the Respondent Hospital has advertted to the leave application submitted by the Complainant, placed on file at Exh. C-10. The Ld. Advocate by placing a heavy reliance on this leave application has submitted that the Complainant under her signature submitted the said prescribed leave application asking a leave for 30 days on the ground of attending the Court work at her native place. In the said leave application form, she had submitted her residence being at Survamisipur, Dist. Pratapgad. The Ld. Advocate has submitted that it was obligatory on the part of the Complainant to get the said leave sanctioned before she could proceed on Earned Leave for 30 days. However, the said leave was not sanctioned and without getting the same sanctioned, the Complainant has proceeded on unauthorised leave. The Ld. Advocate has pointed out that the said leave period was from 7th July 1992 to 5th August 1992.

However, admittedly the Complainant had come to Mumbai on 12th November 1994 without getting even the extended leave sanctioned from the Respondent Hospital. To reinforce her contentions, the Ld. Advocate has further pointed out that the Complainant had sent a telegram from Dist. Pratapgade placed on file at Exh. C-11, informing the postponement of the Court case till 20.8. Advortting to the letter at Exh. C-12, the Ld. Advocate has further pointed out that the reasons stated therein has been an illness on the part of her daughter and the said letter is dtd. 14th September 1992. In the letter dtd. 25th December 1992 at Exh. C-13, the Complainant has recited the reasons for her extension of leave on a ground of illness of her daughter only. The Ld. Advocate further pointed out letter dtd. 12th September 1992 at Exh. C-20, letter dtd. 11th November 1996 at Exh. C-22 directing the Complainant to resume duties immediately.

10. From the evidence placed on file, I observe that admittedly initially the Complainant had gone on earned leave for 30 days from 7th July 1992 to 5th September 1992. In my considered view, it was obligatory on the part of the Complainant to get the said leave sanctioned and then to proceed further. Despite the said leave was not sanctioned, instead of reporting for duties immediately, the Complainant found to have been overstayed her unauthorised leave on the ground of illness of her daughter. In support of her alleged illness, the Complainant has placed on file the medical certificate issued by Dr. R. C. Tiwari dtd. 9th November 1994. The said medical certificate recites her period of treatment from 27th July 1992 to 8th November 1994, under the said Doctor. It is significant to observe that in the said medical certificate, she was advised for year treatment regularly from the date of issuance of certificate dtd. 9th November 1994. This medical certificate does not certify that the Complainant was fit to resume duties. The Ld. Advocate Smt. N. R. Patankar has vehemently submitted that the said medical certificate has been issued from the Doctor residing at Varanasi, while as per her leave application in the prescribed for manifest of proceeding to go to Pratapgad District. Besides this, the letter addressed to the Respondent Hospital by the Complainant herself gives reason as of illness on the part of her daughter and does not mention any illness on her part. It is, therefore, the said medical certificate should have been got proved by the Complainant by examining the Doctor in the trial of the complaint giving an opportunity to the Respondent Hospital to verify the credence of the same. I find a great force in the said argument. To reiterate, in the first instance, the Complainant had proceeded on unauthorised leave. Letter addressed to the Respondent Hospital by the Complainant herself, placed on file at Exh. C-12, C-13 does not give any indication that the Complainant was ill and therefore was not in a position to report for duties. The only reason stated in these letters at Exh. C-12 and C-13 has been confined to illness on the part of her daughter. I, therefore, find myself unable to accept the medical certificate, pressed into service by the Complainant at Exh. 'A' to the complaint.

11. Besides this, it is significant to observe that the Complainant has placed on file a letter dtd. 30th July 1996 at Exh. U-10. This letter *interalia* recites that from many past days due to personal difficulties, the Complainant could not report for duties therefore, she should be allowed to resume her duties as she undertakes not to remain unauthorisedly absent in future. Placing a heavy reliance on this letter, the Ld. Advocate Smt. N. R. Patankar has vehemently submitted that till the date of serving this letter on the Respondent Hospital dtd. 30th July 1996, the Complainant did not report for duties despite she might have come to Mumbai prior to it from her native place. For reinforcing her arguments, the Ld. Advocate Smt. Patankar has brought to the notice of this Court the admission given by the Complainant in her cross-examination on page No. 4 where she has candidly admitted that the Respondent Hospital had

sent a letter dtd. 11th November 1996 with Shri Shaikh Mohammed Isaq for serving the same on her. However, as she had filed the instant complaint, therefore she wanted every correspondence from the Respondent college through the Court only and therefore she had denied to accept the said letter. This letter has been at Exh. C-18 Colly. A bare perusal of the said letter dtd. 11th November 1996 at Exh. C-18 manifest that the Complainant was directed to immediately report for duties. The said letter has been annexed by a letter dtd. 16th November 1996 under the singature of Shri Shaikh Mohammed Ishaq addressed to the Dean of the Respondent Hospital *Interalia* reciting that on 15th November 1996 he had gone to the residence of the Complainant to find she was not available. It is therefore he again visited her home on 16th November 1996, but she refused to accept the letter on understanding the contents of the same. In view of the clear admission given by the Complainant, as observed above, it is explicit that from 11th November 1996 onwards the Complainant despite issuance of the order to report for work immediately, refused to do so. At this juncture, it is significant to observe that the letter placed on file at Exh. U-8 addressed to the Complainant under the signature of the Dean of the Respondent Hospital manifest that the Complainant was refused to resume duties as a departmental enquiry was pending. In my considered view, therefore, the period of refusal of duties has been in between the period from 30th July 1996, the date on which the Complainant had addressed a letter at Exh. U-10 to the Respondent Hospital praying to allow her to resume duties, till the date 11th November 1996, the date on which the Complainant was informed *vide* Exh. C-18 Colly, to report for duties. In my considered view, the Respondent has engaged in unfair labour practice by not allowing the Complainant to resume duties from 30th July 1996 till 11th November 1996 on the ground of pendency of departmental enquiry. I uphold the contention raised by the Ld. Advocate Shri G. C. Pathak that at the most the Respondent Hospital could have suspended her services by paying subsistence allowance, but such pendency of the departmental enquiry cannot be a ground for denying her to resume for duties. As such, the Respondent Hospital has been indulged into unfair labour practice prescribed under item 9 and 10 of Sch. IV. It is significant to observe at this juncture that the Respondent Hospital had submitted an application at Exh. C-19 under the signature of the Dean already placed on file, whereby it expressed its willingness to pay the wages to the Complainant for a period from 30th July 1996 till 11th November 1996.

12. The Ld. Advocate Smt. N. R. Patankar has pressed into service a judgment handed down by the Hon'ble Division Bench of the Apex Court in a case of Raja Ram Maiza Products etc. *V/s.* Industrial Court of M. P. & Ors. *(2001 LAB. I. C. P/1402)* laying down the concept of recurring cause of action. On going through this ratio. I observe that the controversy dealt with by their Lordships and that needs to be resolved in the matter on the hand of this Court, has been totally distinct and different. I, therefore, find the said ratio cannot be applied to the present facts under consideration. The Ld. Advocate has also placed a heavy reliance on a decision handed down by the Hon'ble Full Bench of the Apex Court in a case of Petaled Turkey Red Dye works Co. Ltd. *V/s.* Dyes and Chemical Workers Union & Ors. (1960 I LLJ P/548) *interalia* laying down that if a person has to prove that he was ill on a particular day, more filing of a certificate of a medical man is not accepted as evidence to show that the was ill on that day. The correctness of such statement made in the certificate has to be proved by an affidavit or by oral testimony in the Court by the Doctor concerned or by some other evidence. This aspect being of prudential value to be attached to the medical certificate has been dealt with and I find this authority does provide an impetus to the argument advanced by Ld. Advocate Smt. N. R. Patankar for the Respondent Hospital.

13. In the aforesaid observations, the complaint should succeed partly. Accordingly, I proceed to pass the following order :—

Order

(I) complaint (ULP) No. 1038 of 1996 stands partly allowed.

(II) It is hereby declared that the Respondents have indulged into unfair labour practice prescribed under item 9 and 10 of Sch. IV of the M. R. T. U. & P. U. L. P. Act and they are directed to cease and desist therefrom.

(III) The Respondents have been directed to pay the wages to the Complainant for a period from 30th July 1996 to 11th November 1996 alongwith 12% interest thereon and other monetary benefits there to, within a period of one month from the date of passing this order.

(IV) No order as to the cost.

R. U. INGULE,
Member,
Industrial Court, Mumbai.

Mumbai,
dated the 26th April 2002.

K. G. SATHE,
Registrar,
Industrial Court, Mumbai.
dated the 18th April 2002.

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